SELECT CHARTERS AND OTHER DOCUMENTS

ILLUSTRATIVE OF

AMERICAN HISTORY

1606–1775

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AND OTHER DOCUMENTS

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AMERICAN HISTORY

1606-1775

EDITED WITH NOTES

BY

WILLIAM MACDONALD

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PREFACE

THE present work forms a companion volume to my "Select Documents illustrative of the History of the United States, 1776–1861," and follows, in the main, the general method and arrangement of the earlier work. The aim has been to bring together, in a form suitable for class-room use, the chief constitutional and legal documents of the American colonial period commonly dwelt upon in systematic general courses of instruction. The list will be found to contain, among other pieces, the significant portions of the most important colonial charters, grants, and frames of government, and the acts of Parliament most directly affecting the American colonies. The statutes and state papers of the period immediately preceding the Revolution have not, so far as I know, been readily available hitherto for students who did not have access to large libraries. It has not been possible, however, consistently with the plan and scope of the volume, to deal as fully and satisfactorily with the half century from 1700 to 1750 as with the years preceding and following those dates; and the meagre treatment of this "neglected period" by historians, small and great, is, to some degree, reflected here.

In reprinting the texts, I have written out the obsolete contractions wherever they occurred, and have disregarded the ancient use of *i* and *j*, *u* and *v*, and long *s*. Corrections of a few obvious errors and misprints in the originals have been noted in brackets. Omissions and contractions incident to condensation are indicated by the usual signs.

While it has not seemed proper so to abridge the charters as to destroy their essentially formal character, certain provisions common to nearly all of them have been, as a rule, omitted.

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Such are the sections relating to the tenure of land, nominal payments to king or proprietor, the right to make local laws and ordinances not repugnant to the laws of England, the right of waging offensive and defensive war, etc. These provisions, taking form, for the most part, in the three charters of Virginia, I have thought it unnecessary to repeat on their later recurrence, save in the case of some substantial change in the power granted.

I have to acknowledge my indebtedness to Messrs. Charles Scribner's Sons for permission to reprint, from William Wirt Henry's "Life, Correspondence, and Speeches of Patrick Henry," the Virginia resolutions of 1773; and to the Hon. Josiah Quincy of Boston, and Messrs. Little, Brown & Co., for permission to use the text of the writ of assistance in Quincy's "Massachusetts Reports." Edward McCrady, Esq., of Charleston, S.C., kindly cleared up for me some points in connection with Locke's "Fundamental Constitutions." To Mr. William Coolidge Lane and Mr. Thomas J. Kiernan of the Harvard University Library, Mr. C. B. Tillinghast of the Massachusetts State Library, and Mr. George T. Little of the Bowdoin College Library, I am under obligations for special privileges in the use of the collections under their care.

WILLIAM MACDONALD.

BRUNSWICK, MAINE,
October, 1899.

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Select Charters and other Documents

Illustrative of

American History

No. 1. First Charter of Virginia

April 10/20, 1606

THE region included in the Virginia grant was claimed by Spain, but the close of the war between Spain and England, in 1604, left the latter free to extend the area of its occupation in America. Various plans for settlement and trade were brought forward soon after the return of Weymouth, in July, 1605. A petition for a charter, signed by Sir Thomas Gates, Sir George Somers, Hakluyt, and others, was favorably considered by James I., and in April, 1606, the charter passed the seals. The first draft of the charter, accompanying the petition, was probably drawn by Sir John Popham, lord chief justice, but the final form was the work of Sir Edward Coke, attorney-general, and Sir John Dodderidge, solicitor-general. Royal orders and instructions for the government of the two colonies and the conduct of their affairs were issued Nov. 20/30 and Dec. 10/20, 1606. An ordinance and constitution of March 9/19, 1607, increased the membership of the council and enlarged its authority.

REFERENCES. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix I. Invaluable documentary material for the early history of Virginia, to 1616, is set forth in Brown's *Genesis of the United States;* see also the same author's *First Republic in America*, 1–71. Important contemporary accounts are: John Smith's *A True Relation* (Deane's ed., 1866, with notes), and *General Historie* (Arber's reprint); Wingfield's *A Discourse of Virginia* (Deane's ed., with notes, in *Archæologia Americana*, IV., 67–163); and *A True Declaration of the Estate of the Colonie in Virginia* (in Force's *Tracts*, III.). See further: Neill's *Virginia Company;* Sainsbury's *Calendar of State Papers*, Colonial, I.; Doyle's *Virginia*, 134–242.

I. *JAMES*, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, &c. WHEREAS our loving and well-disposed Subjects, Sir *Thomas Gates*, and Sir

George Somers, Knights, *Richard Hackluit*, Clerk, Prebendary of *Westminster*, and *Edward-Maria Wingfield*, *Thomas Hanham*, and *Ralegh Gilbert*, Esqrs. *William Parker*, and *George Popham*, Gentlemen, and divers others of our loving Subjects, have been humble Suitors unto us, that We would vouchsafe unto them our Licence, to make Habitation, Plantation, and to deduce a Colony of sundry of our People into that Part of *America*, commonly called VIRGINIA, and other Parts and Territories in *America*, either appertaining unto us, or which are not now actually possessed by any *Christian* Prince or People, situate, lying, and being all along the Sea Coasts, between four and thirty Degrees of *Northerly* Latitude from the Equinoctial Line, and five and forty Degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof;

II. AND to that End, and for the more speedy Accomplishment of their said intended Plantation and Habitation there, are desirous to divide themselves into two several Colonies and Companies; The one consisting of certain Knights, Gentlemen, Merchants, and other Adventurers, of our City of *London* and elsewhere, which are, and from time to time shall be, joined unto them, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between four and thirty and one and forty Degrees of the said Latitude, alongst the Coasts of *Virginia* and Coasts of *America* aforesaid; And the other consisting of sundry Knights, Gentlemen, Merchants, and other Adventurers, of our Cities of *Bristol* and *Exeter*, and of our Town of *Plimouth*, and of other Places, which do join themselves unto that Colony, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between eight and thirty Degrees and five and forty Degrees of the said Latitude, all alongst the said Coast of *Virginia* and *America*, as that Coast lyeth:

III. WE, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of *Christian* Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those Parts, to human Civility,

and to a settled and quiet Government; DO, by these our Letters Patents, graciously accept of, and agree to, their humble and well-intended Desires;

IV. And do therefore, for Us, our Heirs, and Successors, GRANT and agree, that the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, and *Edward-Maria Wingfield*, Adventurers of and for our City of *London*, and all such others, as are, or shall be, joined unto them of that Colony, shall be called the *first Colony;* And they shall and may begin their said first Plantation and Habitation, at any Place upon the said Coast of *Virginia* or *America*, where they shall think fit and convenient, between the said four and thirty and one and forty Degrees of the said Latitude; And that they shall have all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said first Seat of their Plantation and Habitation by the Space of fifty Miles of *English* Statute Measure, all along the said Coast of *Virginia* and *America*, towards the *West* and *Southwest*, as the Coast lyeth, with all the Islands within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Waters, Marshes, Fishings, Commodities, and Hereditaments, whatsoever, from the said Place of their first Plantation and Habitation for the space of fifty like *English* Miles, all alongst the said Coast of *Virginia* and *America*, towards the *East* and *Northeast*, or towards the *North*, as the Coast lyeth, together with all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land by the Space of one hundred like *English* Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same, for their better Safeguard and Defence, according to their best Discretion, and the Discretion of the Council of that Colony; And that no other of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the Backside of them, towards the main Land, without the Express Licence or Consent of the Council of that Colony, thereunto in Writing first had and obtained.

V. And we do likewise, for Us, our Heirs, and Successors, by these Presents, Grant and agree, that the said *Thomas Hanham*, and *Ralegh Gilbert*, *William Parker*, and *George Popham*, and all others of the Town of *Plimouth* in the County of *Devon*, or elsewhere, which are, or shall be, joined unto them of that Colony, shall be called the *second Colony;* And that they shall and may begin their said Plantation and Seat of their first Abode and Habitation, at any Place upon the said Coast of *Virginia* and *America*, where they shall think fit and convenient, between eight and thirty Degrees of the said Latitude, and five and forty Degrees of the same Latitude; And that they shall have all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the first Seat of their Plantation and Habitation by the Space of fifty like *English* Miles, as is aforesaid, all alongst the said Coast of *Virginia* and *America*, towards the *West* and *Southwest*, or towards the *South*, as the Coast lyeth, and all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said Place of their first Plantation and Habitation for the Space of fifty like Miles, all alongst the said Coast of *Virginia* and *America*, towards the *East* and *Northeast*, or towards the *North*, as the Coast lyeth, and all the Islands also within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Woods, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land, by the Space of one hundred like *English* Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same for their better Safeguard, according to their best Discretion, and the Discretion of the Council of that Colony; And that none of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the back of them, towards the main Land, without the express Licence of the Council of that Colony, in Writing thereunto first had and obtained.

VI. Provided always, and our Will and Pleasure herein is, that the Plantation and Habitation of such of the said Colonies,

as shall last plant themselves, as aforesaid, shall not be made within one hundred like *English* Miles of the other of them, that first began to make their Plantation, as aforesaid.

VII. And we do also ordain, establish, and agree, for Us, our Heirs, and Successors, that each of the said Colonies shall have a Council, which shall govern and order all Matters and Causes, which shall arise, grow, or happen, to or within the same several Colonies, according to such Laws, Ordinances, and Instructions, as shall be, in that behalf, given and signed with Our Hand or Sign Manual, and pass under the Privy Seal of our Realm of *England;* Each of which Councils shall consist of thirteen Persons, to be ordained, made, and removed, from time to time, according as shall be directed and comprised in the same instructions; And shall have a several Seal, for all Matters that shall pass or concern the same several Councils; Each of which Seals shall have the King's Arms engraven on the one Side thereof, and his Portraiture on the other; And that the Seal for the Council of the said first Colony shall have engraven round about, on the one Side, these Words; *Sigillum Regis Magnæ Britanniæ, Franciæ, & Hiberniæ;* on the other Side this Inscription, round about; *Pro Concilio primæ Coloniæ Virginiæ.* And the Seal for the Council of the said second Colony shall also have engraven, round about the one Side thereof, the aforesaid Words; *Sigillum Regis Magnæ, Britanniæ, Franciæ, & Hiberniæ;* and on the other Side; *Pro Concilio secundæ Coloniæ Virginiæ:*

VIII. And that also there shall be a Council established here in *England,* which shall, in like Manner, consist of thirteen Persons, to be, for that Purpose, appointed by Us, our Heirs and Successors, which shall be called our *Council of Virginia;* And shall, from time to time, have the superior Managing and Direction, only of and for all Matters, that shall or may concern the Government, as well of the said several Colonies, as of and for any other Part or Place, within the aforesaid Precincts of four and thirty and five and forty Degrees, abovementioned; Which Council shall, in like manner, have a Seal, for Matters concerning the Council or Colonies, with the like Arms and Portraiture, as aforesaid, with this Inscription, engraven round about on the one Side; *Sigillum Regis Magnæ Britanniæ, Franciæ, & Hiberniæ;* and round about the other Side, *Pro Concilio suo Virginiæ.*

IX. And moreover, we do Grant and agree, for Us, our Heirs and Successors, that the said several Councils, of and for the said several Colonies, shall and lawfully may, by Virtue hereof, from time to time, without any Interruption of Us, our Heirs or Successors, give and take Order, to dig, mine, and search for all Manner of Mines of Gold, Silver, and Copper, as well within any part of their said several Colonies, as for the said main Lands on the Backside of the same Colonies; And to Have and enjoy the Gold, Silver, and Copper, to be gotten thereof, to the Use and Behoof of the same Colonies, and the Plantations thereof; Yielding therefore, to Us, our Heirs and Successors, the fifth Part only of all the same Gold and Silver, and the fifteenth Part of all the same Copper, so to be gotten or had, as is aforesaid, without any other Manner of Profit or Account, to be given or yielded to Us, our Heirs, or Successors, for or in Respect of the same:

X. And that they shall, or lawfully may, establish and cause to be made a Coin, to pass current there between the People of those several Colonies, for the more Ease of Traffick and Bargaining between and amongst them and the Natives there, of such Metal, and in such Manner and Form, as the said several Councils there shall limit and appoint.

XI. And we do likewise, for Us, our Heirs, and Successors, by these Presents, give full Power and Authority to the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, *Edward-Maria Wingfield*, *Thomas Hanham*, *Ralegh Gilbert*, *William Parker*, and *George Popham*, and to every of them, and to the said several Companies, Plantations, and Colonies, that they, and every of them, shall and may, at all and every time and times hereafter, have, take, and lead in the said Voyage, and for and towards the said several Plantations and Colonies, and to travel thitherward, and to abide and inhabit there, in every the said Colonies and Plantations, such and so many of our Subjects, as shall willingly accompany them, or any of them, in the said Voyages and Plantations; With sufficient Shipping, and Furniture of Armour, Weapons, Ordinance, Powder, Victual, and all other things, necessary for the said Plantations, and for their Use and Defence there: Provided always, that none of the said Persons be such, as shall hereafter be specially restrained by Us, our Heirs, or Successors.

XII. MOREOVER, we do, by these Presents, for Us, our Heirs, and Successors, GIVE AND GRANT Licence unto the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, *Edward-Maria Wingfield*, *Thomas Hanham*, *Ralegh Gilbert*, *William Parker*, and *George Popham*, and to every of the said Colonies, that they, and every of them, shall and may, from time to time, and at all times for ever hereafter, for their several Defences, encounter, expulse, repel, and resist, as well by Sea as by Land, by all Ways and Means whatsoever, all and every such Person and Persons, as without the especial Licence of the said several Colonies and Plantations, shall attempt to inhabit within the said several Precincts and Limits of the said several Colonies and Plantations, or any of them, or that shall enterprise or attempt, at any time hereafter, the Hurt, Detriment, or Annoyance, of the said several Colonies or Plantations :

XIII. GIVING AND GRANTING, by these Presents, unto the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, *Edward-Maria Wingfield*, and their Associates of the said first Colony, and unto the said *Thomas Hanham*, *Ralegh Gilbert*, *William Parker*, and *George Popham*, and their Associates of the said second Colony, and to every of them, from time to time, and at all times for ever hereafter, Power and Authority to take and surprise, by all Ways and Means whatsoever, all and every Person and Persons, with their Ships, Vessels, Goods and other Furniture, which shall be found trafficking, into any Harbour or Harbours, Creek or Creeks, or Place, within the Limits or Precincts of the said several Colonies and Plantations, not being of the same Colony, until such time, as they, being of any Realms or Dominions under our Obedience, shall pay, or agree to pay, to the Hands of the Treasurer of that Colony, within whose Limits and Precincts they shall so traffick, two and a half upon every Hundred, of any thing, so by them trafficked, bought, or sold; And being Strangers, and not Subjects under our Obeysance, until they shall pay five upon every Hundred, of such Wares and Merchandises, as they shall traffick, buy, or sell, within the Precincts of the said several Colonies, wherein they shall so traffick, buy, or sell, as aforesaid; WHICH Sums of Money, or Benefit, as aforesaid, for and during the Space of one and twenty Years, next ensuing the Date hereof, shall be wholly employed to the Use, Benefit, and Behoof of the said several Plan-

tations, where such Traffick shall be made; And after the said one and twenty Years ended, the same shall be taken to the Use of Us, our Heirs, and Successors, by such Officers and Ministers, as by Us, our Heirs, and Successors, shall be thereunto assigned or appointed.

XIV. And we do further, by these Presents, for Us, our Heirs, and Successors, Give and grant unto the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, and *Edward-Maria Wingfield*, and to their Associates of the said first Colony and Plantation, and to the said *Thomas Hanham*, *Ralegh Gilbert*, *William Parker*, and *George Popham*, and their Associates of the said second Colony and Plantation, that they, and every of them, by their Deputies, Ministers, and Factors, may transport the Goods, Chattels, Armour, Munition, and Furniture, needful to be used by them, for their said Apparel, Food, Defence, or otherwise in Respect of the said Plantations, out of our Realms of *England* and *Ireland*, and all other our Dominions, from time to time, for and during the Time of seven Years, next ensuing the Date hereof, for the better Relief of the said several Colonies and Plantations, without any Custom, Subsidy, or other Duty, unto Us, our Heirs, or Successors, to be yielded or paid for the same.

XV. Also we do, for Us, our Heirs, and Successors, Declare, by these Presents, that all and every the Persons, being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall have and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of *England*, or any other of our said Dominions.

XVI. Moreover, our gracious Will and Pleasure is, and we do, by these Presents, for Us, our Heirs, and Successors, declare and set forth, that if any Person or Persons, which shall be of any of the said Colonies and Plantations, or any other, which shall traffick to the said Colonies and Plantations, or any of them, shall, at any time or times hereafter, transport any Wares, Merchandises, or Commodities, out of any our Dominions, with a Pretence to land, sell, or otherwise dispose of the same, within

any the Limits and Precincts of any the said Colonies and Plantations, and yet nevertheless, being at Sea, or after he hath landed the same within any of the said Colonies and Plantations, shall carry the same into any other Foreign Country, with a Purpose there to sell or dispose of the same, without the Licence of Us, our Heirs, and Successors, in that Behalf first had and obtained; That then, all the Goods and Chattels of such Person or Persons, so offending and transporting, together with the said Ship or Vessel, wherein such Transportation was made, shall be forfeited to Us, our Heirs, and Successors.

XVII. PROVIDED always, and our Will and Pleasure is, and we do hereby declare to all *Christian* Kings, Princes, and States, that if any Person or Persons, which shall hereafter be of any of the said several Colonies and Plantations, or any other, by his, their or any of their Licence and Appointment, shall, at any time or times hereafter, rob or spoil, by Sea or by Land, or do any Act of unjust and unlawful Hostility, to any the Subjects of Us, our Heirs, or Successors, or any the Subjects of any King, Prince, Ruler, Governor, or State, being then in League or Amity with Us, our Heirs, or Successors, and that upon such Injury, or upon just Complaint of such Prince, Ruler, Governor, or State, or their Subjects, We, our Heirs, or Successors, shall make open Proclamation, within any of the Ports of our Realm of *England*, commodious for that Purpose, That the said Person or Persons, having committed any such Robbery or Spoil, shall, within the Term to be limited by such Proclamations, make full Restitution or Satisfaction of all such Injuries done, so as the said Princes, or others, so complaining, may hold themselves fully satisfied and contented; And that, if the said Person or Persons, having committed such Robbery or Spoil, shall not make, or cause to be made, Satisfaction accordingly, within such Time so to be limited, That then it shall be lawful to Us, our Heirs, and Successors, to put the said Person or Persons, having committed such Robbery or Spoil, and their Procurers, Abetters, or Comforters, out of our Allegiance and Protection; And that it shall be lawful and free, for all Princes and others, to pursue with Hostility the said Offenders, and every of them, and their and every of their Procurers, Aiders, Abetters, and Comforters, in that Behalf.

XVIII. AND finally, we do, for Us, our Heirs, and Successors,

GRANT and agree, to and with the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, and *Edward-Maria Wingfield*, and all others of the said first Colony, that We, our Heirs, and Successors, upon Petition in that Behalf to be made, shall, by Letters-patent under the Great Seal of *England*, GIVE and GRANT unto such Persons, their Heirs, and Assigns, as the Council of that Colony, or the most Part of them, shall, for that Purpose nominate and assign, all the Lands, Tenements, and Hereditaments, which shall be within the Precincts limited for that Colony, as is aforesaid, TO BE HOLDEN of Us, our Heirs, and Successors, as of our Manor at *East-Greenwich* in the County of *Kent*, in free and common Soccage only, and not in Capite:

XIX. AND do, in like Manner, Grant and Agree, for Us, our Heirs, and Successors, to and with the said *Thomas Hanham*, *Ralegh Gilbert*, *William Parker*, and *George Popham*, and all others of the said second Colony, That We, our Heirs, and Successors, upon Petition in that Behalf to be made, shall, by Letters-patent under the Great Seal of *England*, GIVE and GRANT unto such Persons, their Heirs, and Assigns, as the Council of that Colony, or the most Part of them, shall, for that Purpose, nominate and assign, all the Lands, Tenements, and Hereditaments, which shall be within the Precincts limited for that Colony, as is aforesaid, TO BE HOLDEN of Us, our Heirs, and Successors, as of our Manour of *East-Greenwich* in the County of *Kent*, in free and common Soccage only, and not in Capite.

XX. ALL which Lands, Tenements, and Hereditaments, so to be passed by the said several Letters-patent, shall be sufficient Assurance from the said Patentees, so distributed and divided amongst the Undertakers for the Plantation of the said several Colonies, and such as shall make their Plantations in either of the said several Colonies, in such Manner and Form, and for such Estates, as shall be ordered and set down by the Council of the said Colony, or the most Part of them, respectively, within which the same Lands, Tenements, and Hereditaments shall lye or be; Although express Mention of the true yearly Value or Certainty of the Premises, or any of them, or of any other Gifts or Grants, by Us or any of our Progenitors or Predecessors, to the aforesaid Sir *Thomas Gates*, Knt. Sir *George Somers*, Knt. *Richard Hackluit*, *Edward-Maria Wingfield*, *Thomas Hanham*, *Raleigh Gilbert*, *William Parker*, and *George Popham*, or any of them, heretofore

made, in these Presents, is not made; Or any Statute, Act, Ordinance, or Provision, Proclamation, or Restraint, to the contrary hereof had, made, ordained, or any other Thing, Cause, or Matter whatsoever, in any wise notwithstanding. . . .

No. 2. Second Charter of Virginia

May 23/June 2, 1609

In January, 1609, Newport returned from Virginia, bringing various papers setting forth the condition of the colony. The first charter, in itself essentially experimental, had already proved defective; and this, together with the discouraging outlook for the Company, led to an application for a new charter, with larger and more specific privileges. The first drafts of both the second and the third charters, annexed to the petitions, were probably drawn by Sir Edwin Sandys, but the final form in each case was the work of Sir Henry Hobart, attorney-general, and Sir Francis Bacon, solicitor-general. With the second charter the connection between the Plymouth Company and the London Company ceased, and the latter became a separate corporate body.

References. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix II. See Brown's *First Republic in America*, 73–165, and authorities under No. 1.

[The charter begins with a recital of the grant of 1606, and continues:]

II. Now, forasmuch as divers and sundry of our loving Subjects, as well Adventurers, as Planters, of the said first Colony, which have already engaged themselves in furthering the Business of the said Colony and Plantation, and do further intend, by the Assistance of Almighty God, to prosecute the same to a happy End, have of late been humble Suitors unto Us, that (in Respect of their great Charges and the Adventure of many of their Lives, which they have hazarded in the said Discovery and Plantation of the said Country) We would be pleased to grant them a further Enlargement and Explanation of the said Grant, Privileges, and Liberties, and that such Counsellors, and other Officers, may be appointed amongst them, to manage and direct their affairs, as are willing and ready to adventure with them, as also whose Dwellings are not so far remote from the City of *London*, but that they may, at convenient Times, be ready at Hand, to give their Advice and Assistance, upon all Occasions requisite.

III. We, greatly affecting the effectual Prosecution and happy

Success of the said Plantation, and commending their good Desires therein, for their further Encouragement in accomplishing so excellent a Work, much pleasing to God, and profitable to our Kingdom, Do . . . GIVE, GRANT, and CONFIRM, to our trusty and well-beloved Subjects, *Robert*, Earl of *Salisbury* . . . [and others*] . . . ; AND to such, and so many, as they do, or shall hereafter, admit to be joined with them, in Form hereafter in these Presents expressed, whether they go in their Persons, to be Planters there in the said Plantation, or whether they go not, but adventure their Monies, Goods, or Chattels ; THAT they shall be one Body or Commonalty perpetual, and shall have perpetual Succession, and one common Seal, to serve for the said Body or Commonalty; And that they, and their Successors, shall be KNOWN, CALLED, and INCORPORATED by the Name of, *The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia :*

IV. AND that they, and their Successors, shall be, from henceforth, for ever enabled to TAKE, ACQUIRE, and PURCHASE, by the Name aforesaid (Licence for the same, from Us, our Heirs or Successors, first had and obtained) any Manner of Lands, Tenements, and Hereditaments, Goods, and Chattels, within our Realm of *England*, and Dominion of *Wales :*

V. AND that they, and their Successors, shall likewise be enabled, by the Name aforesaid, to PLEAD, and BE IMPLEADED, before any of our Judges or Justices, in any of our Courts, and in any Actions or Suits whatsoever.

VI. AND we do also . . . GIVE, GRANT and CONFIRM, unto the said Treasurer and Company, and their Successors, under the Reservations, Limitations, and Declarations, hereafter expressed, all those Lands, Countries, and Territories, situate, lying, and being, in that Part of *America* called VIRGINIA, from the Point of Land, called Cape or *Point Comfort*, all along the Sea Coast, to the *Northward* two hundred Miles, and from the said Point of *Cape Comfort*, all along the Sea Coast, to the *Southward* two hundred Miles, and all that Space and Circuit of Land, lying from the Sea Coast of the Precinct aforesaid, up into the Land, throughout

* "The incorporators of this charter were 56 city companies of London and 659 persons; of whom 21 were peers, 96 knights, 11 doctors, ministers, etc., 53 captains, 28 esquires, 58 gentlemen, 110 merchants, and 282 citizens and others not classified." Brown's *Genesis of the United States*, I., 228, note 1. The list of incorporators is given in full by Brown.

from Sea to Sea, West, and Northwest; And also all the Islands, lying within one hundred Miles, along the Coast of both Seas of the Precinct aforesaid; . . .

VII. And nevertheless, our Will and Pleasure is, and we do, by these Presents, charge, command, warrant, and authorise, that the said Treasurer and Company, or their Successors, or the major Part of them, which shall be present and assembled for that Purpose, shall, from time to time, under their Common Seal, Distribute, convey, assign, and set over, such particular Portions of Lands, Tenements, and Hereditaments, by these Presents, formerly granted, unto such our loving Subjects, naturally born, or Denizens, or others, as well Adventurers as Planters, as by the said Company (upon a Commission of Survey and Distribution, executed and returned for that Purpose), shall be nominated, appointed, and allowed; Wherein our Will and Pleasure is, that Respect be had, as well of the Proportion of the Adventurer, as to the special Service, Hazard, Exploit, or Merit of any Person, so to be recompenced, advanced, or rewarded.

VIII. And forasmuch, as the good and prosperous Success of the said Plantation cannot but chiefly depend, next under the Blessing of God, and the Support of our Royal Authority, upon the provident and good Direction of the whole Enterprize, by a careful and understanding Council, and that it is not convenient, that all the Adventurers shall be so often drawn to meet and assemble, as shall be requisite for them to have Meetings and Conference about the Affairs thereof; Therefore we DO ORDAIN, establish, and confirm, that there shall be perpetually one Council here resident, according to the Tenour of our former Letters-patents; Which Council shall have a Seal, for the better Government and Administration of the said Plantation, besides the legal Seal of the Company or Corporation, as in our former Letters-patents is also expressed.

[Section IX. names the members of the council.]

X. And the said Sir *Thomas Smith* we do ORDAIN to be Treasurer of the said Company; which Treasurer shall have Authority to give Order, for the Warning of the Council, and summoning the Company, to their Courts and Meetings.

XI. And the said Council and Treasurer, or any of them, shall be from henceforth, nominated, chosen, continued, displaced, changed, altered, and supplied, as Death, or other several Occa-

sions, shall require, out of the Company of the said Adventurers, by the Voice of the greater Part of the said Company and Adventurers, in their Assembly for that Purpose: PROVIDED always, That every Counsellor, so newly elected, shall be presented to the Lord Chancellor of *England*, or to the Lord High Treasurer of *England*, or to the Lord Chamberlain of the Household of Us, our Heirs, and Successors, for the time being, to take his Oath of a Counsellor to Us, our Heirs, and Successors, for the said Company of Adventurers and Colony in *Virginia*.

* * * * * * * * * * *

XIII. AND further . . . we do, by these Presents, GIVE and GRANT full Power and Authority to our said Council, here resident, as well at this present Time, as hereafter from time to time, to nominate, make, constitute, ordain, and confirm, by such Name or Names, Stile or Stiles, as to them shall seem good, And likewise to revoke, discharge, change, and alter, as well all and singular Governors, Officers, and Ministers, which already have been made, as also which hereafter shall be by them thought fit and needful to be made or used, for the Government of the said Colony and Plantation:

XIV. AND also to make, ordain, and establish all Manner of Orders, Laws, Directions, Instructions, Forms, and Ceremonies of Government and Magistracy, fit and necessary, for and concerning the Government of the said Colony and Plantation; And the same, at all times hereafter, to abrogate, revoke, or change, not only within the Precincts of the said Colony, but also upon the Seas in going and coming, to and from the said Colony, as they, in their good Discretion, shall think to be fittest for the Good of the Adventurers and Inhabitants there.

* * * * * * * * * * *

XVI. AND we do further, by these Presents, ORDAIN and establish, that the said Treasurer and Council here resident, and their Successors, or any four of them, being assembled (the Treasurer being one) shall, from time to time, have full Power and Authority, to admit and receive any other Person into their Company, Corporation, and Freedom; And further, in a General Assembly of the Adventurers, with the Consent of the greater Part, upon good Cause, to disfranchise and put out any Person or Persons, out of the said Freedom or Company.

* * * * * * * * * * *

XIX. And for their further Encouragement . . . we do . . . Yield and Grant, to and with the said Treasurer and Company, and their Successors, and every of them, their Factors, and Assigns, that they, and every of them, shall be free of all Subsidies and Customs in *Virginia*, for the Space of one and twenty Years, and from all Taxes and Impositions, for ever, upon any Goods or Merchandises, at any time or times hereafter, either upon Importation thither, or Exportation from thence, into our Realm of *England*, or into any other of our Realms or Dominions, by the said Treasurer and Company, and their Successors, their Deputies, Factors, or Assigns, or any of them: Except only the five Pounds *per Cent.* due for Custom, upon all such Goods and Merchandises, as shall be brought or imported into our Realm of *England*, or any other of these our Dominions, according to the ancient Trade of Merchants; Which five Pounds *per Cent.* only being paid, it shall be thenceforth lawful and free for the said Adventurers, the same Goods and Merchandises to export, and carry out of our said Dominions, into foreign Parts, without any Custom, Tax, or other Duty, to be paid to us, our Heirs, or Successors, or to any other our Officers or Deputies: Provided, that the said Goods and Merchandises be shipped out, within thirteen Months, after their first Landing within any Part of these Dominions.

* * * * * * * * * * *

XXIII. And forasmuch, as it shall be necessary for all such our loving Subjects, as shall inhabit within the said Precincts of *Virginia*, aforesaid, to determine to live together, in the Fear and true Worship of Almighty God, Christian Peace, and civil Quietness, each with other, whereby every one may, with more Safety, Pleasure, and Profit, enjoy that, whereunto they shall attain with great Pain and Peril; We . . . do give and grant unto the said Treasurer and Company, and their Successors, and to such Governors, Officers, and Ministers, as shall be, by our said Council, constituted and appointed, according to the Natures and Limits of their Offices and Places respectively, that they shall and may, from time to time for ever hereafter, within the said Precincts of *Virginia*, or in the way by Sea thither and from thence, have full and absolute Power and Authority, to correct, punish, pardon, govern, and rule, all such the Subjects of Us . . . as shall, from time to time, adventure themselves in any

Voyage thither, or that shall, at any time hereafter, inhabit in the Precincts and Territories of the said Colony, as aforesaid, according to such Orders, Ordinances, Constitutions, Directions, and Instructions, as by our said Council, as aforesaid, shall be established; And in Defect thereof, in case of Necessity, according to the good Discretions of the said Governor and Officers, respectively, as well in Cases capital and criminal as civil, both marine and other; So always, as the said Statutes, Ordinances, and Proceedings, as near as conveniently may be, be agreeable to the Laws, Statutes, Government, and Policy of this our Realm of *England*.

XXIV. And we do further . . . GRANT, DECLARE, and ORDAIN, that such principal Governor, as, from time to time, shall duly and lawfully be authorised and appointed, in Manner and Form in these Presents heretofore expressed, shall have full Power and Authority, to use and exercise Martial Law, in Cases of Rebellion or Mutiny, in as large and ample Manner, as our Lieutenants in our Counties, within this our Realm of *England*, have, or ought to have, by Force of their Commissions of Lieutenancy.

* * * * * * * * * * *

XXIX. And lastly, because the principal Effect, which we can desire or expect of this Action, is the Conversion and Reduction of the People in those Parts unto the true Worship of God and Christian Religion, in which Respect we should be loath, that any Person should be permitted to pass, that we suspected to affect the superstitions of the Church of *Rome;* We do hereby DECLARE, that it is our Will and Pleasure, that none be permitted to pass in any Voyage, from time to time to be made into the said Country, but such, as first shall have taken the Oath of Supremacy; For which Purpose, we do, by these Presents, give full Power and Authority, to the Treasurer for the time being, and any three of the Council, to tender and exhibit the said Oath, to all such Persons, as shall at any time, be sent and employed in the said Voyage. . . .

No. 3. Third Charter of Virginia

March 12/22, 1611/12

THE immediate reason for the third charter of Virginia was the desire to include within the limits of the Company the Bermudas, or Somers Islands, respecting whose beauty, fertility, and wealth glowing reports had been received; but the failure of many subscribers to pay their subscriptions, and the consequent low state of the treasury, emphasized the need of stronger powers of control. The petition was probably granted before November, 1610; but the names of subscribers were obtained with difficulty, and it was March, 1612, before the charter passed the seals. The rights in the Bermudas were subsequently sold by the Company to some of its own members, who, in 1614, obtained a charter as the Somers Islands Company. The Virginia charter of 1612 was annulled by writ of *quo warranto* in 1624.

REFERENCES. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix III. Hening's *Statutes at Large*, I., gives the early laws of the colony. The royal proclamation of 1625 is in Hazard's *Historical Collections*, I., 203–205. See also: *Proceedings of the Virginia Company, 1619–1624* (in Va. Hist. Soc., *Collections*, VII., VIII.); Brown's *First Republic in America*, 165–648; and authorities under No. 1.

[The charter begins with a recital of the grant of 1609, and continues:]

III. Now, forasmuch as we are given to understand, that in those Seas, adjoining to the said Coasts of *Virginia*, and without the Compass of those two hundred Miles, by Us so granted unto the said Treasurer and Company, as aforesaid, and yet not far distant from the said Colony in *Virginia*, there are, or may be, divers Islands, lying desolate and uninhabited, some of which are already made known and discovered, by the Industry, Travel, and Expences of the said Company, and others also are supposed to be and remain, as yet, unknown and undiscovered, all and every of which it may import the said Colony, both in Safety and Policy of Trade, to populate and plant, in Regard whereof, as well for the preventing of Peril, as for the better Commodity and Prosperity of the said Colony, they have been humble Suitors unto us, that we would be pleased to grant unto them an Enlargement of our said former Letters Patents, as well for a more ample Extent of their Limits and Territories into the Seas, adjoining to and upon the Coast of *Virginia*, as also for some other Matters and Articles, concerning the better Government of the said Company and Colony, in which Point our said former Letters Patents

do not extend so far, as Time and Experience hath found to be needful and convenient:

IV. We therefore, tendering the good and happy Success of the said Plantation, both in Regard of the general Weal of human Society, as in Respect of the Good of our own Estate and Kingdoms, and being willing to give Furtherance unto all good Means, that may advance the Benefit of the said Company, and which may secure the Safety of our loving Subjects, planted in our said Colony under the Favour and Protection of God Almighty, and of our Royal Power and Authority . . ., do, by these Presents, Give, Grant, and Confirm to the said Treasurer and Company of Adventurers and Planters of the city of *London* for the first Colony in *Virginia*, and to their Heirs and Successors, for ever, all and singular those Islands whatsoever, situate and being in any Part of the Ocean Seas bordering upon the Coast of our said first Colony in *Virginia*, and being within three hundred Leagues of any of the Parts heretofore granted to the said Treasurer and Company, in our said former Letters Patents, as aforesaid, and being within or between the one and fortieth and thirtieth Degrees of *Northerly* Latitude; . . . Provided always, that the said Islands, or any the Premises herein mentioned, or by these Presents intended or meant to be granted, be not actually possessed or inhabited by any other *Christian* Prince or Estate, nor be within the Bounds, Limits, or Territories of the *Northern* Colony, heretofore by Us granted to be planted by divers of our loving Subjects, in the *North* Parts of *Virginia* . . .

* * * * * * * * * * *

VII. And We do hereby ordain and grant, by these Presents, that the said Treasurer and Company of Adventurers and Planters aforesaid, shall and may, once every Week, or oftener, at their Pleasure, hold and keep a Court and Assembly, for the better Order and Government of the said Plantation, and such things, as shall concern the same; And that any five Persons of our Council for the said first Colony in *Virginia*, for the time being, of which Company the Treasurer, or his Deputy, to be always one, and the Number of fifteen others, at the least, of the Generality of the said Company, assembled together in such Manner, as is and hath been heretofore used and accustomed, shall be said, taken, held, and reputed to be, and shall be a *sufficient Court* of the said Company, for the handling, and ordering, and

dispathcing [dispatching] of all such casual and particular Occurrences, and accidental Matters, of less Consequence and Weight, as shall, from time to time, happen, touching and concerning the said Plantation:

VIII. And that nevertheless, for the handling, ordering, and disposing of Matters and Affairs of greater Weight and Importance, and such, as shall or may, in any Sort, concern the Weal Publick and general Good of the said Company and Plantation, as namely, the Manner of Government from time to time to be used, the Ordering and Disposing of the Lands and Possessions, and the Settling and Establishing of a Trade there, or such like, there shall be held and kept, every Year, upon the last *Wednesday*, save one, of *Hillary* Term, *Easter*, *Trinity*, and *Michaelmas* Terms, for ever, one great, general, and solemn Assembly, which four Assemblies shall be stiled and called, *The four Great and General Courts of the Council and Company of Adventurers for Virginia;* In all and every of which said Great and General Courts, so assembled . . ., the said Treasurer and Company, or the greater Number of them, so assembled, shall and may have full Power and Authority, from time to time, and at all times hereafter, to elect and chuse discreet Persons, to be of our said Council for the said first Colony in *Virginia*, and to nominate and appoint such Officers, as they shall think fit and requisite, for the Government, Managing, Ordering, and Dispatching of the Affairs of the said Company; And shall likewise have full Power and Authority, to ordain and make such Laws and Ordinances, for the Good and Welfare of the said Plantation, as to them, from time to time, shall be thought requisite and meet: *So always*, as the same be not contrary to the Laws and Statutes of this our Realm of *England*. . . .

* * * * * * * * * * *

XIV. And furthermore, whereas we have been certified, that divers lewd and ill-disposed Persons, both Sailers, Soldiers, Artificers, Husbandmen, Labourers, and others, having received Wages, Apparel, and other Entertainment from the said Company, or having contracted and agreed with the said Company, to go, or to serve, or to be employed in the said Plantation of the said first Colony in *Virginia*, have afterwards, either withdrawn, hid, or concealed themselves, or have refused to go thither, after they have been so entertained and agreed withal; And that divers and sundry Persons also, which have been sent and em-

ployed in the said Plantation of the said first Colony in *Virginia*, at and upon the Charge of the said Company, and having there misbehaved themselves by Mutinies, Sedition, or other notorious Misdemeanors, or having been employed or sent abroad, by the Governor of Virginia or his Deputy, with some Ship or Pinnace, for our Provision of the said Colony, or for some Discovery, or other Business and Affairs, concerning the same, have from thence most treacherously, either come back again and returned into our Realm of *England*, by Stealth, or without Licence of our Governor of our said Colony in Virginia for the time being, or have been sent hither, as Misdoers and Offenders; And that many also of those Persons, after their Return from thence, having been questioned by our said Council here, for such their Misbehaviors and Offences, by their insolent and contemptuous Carriage in the Presence of our said Council, have shewed little Respect and Reverence, either to the Place, or Authority, in which we have placed and appointed them; And others, for the colouring of their Lewdness and Misdemeanors committed in *Virginia*, have endeavoured, by most vile and slanderous Reports, made and divulged, as well of the Country of *Virginia*, as also of the Government and Estate of the said Plantation and Colony, as much as in them lay, to bring the said Voyage and Plantation into Disgrace and Contempt; By Means whereof, not only the Adventurers and Planters, already engaged in the said Plantation, have been exceedingly abused and hindered, and a great Number of other our loving and well-disposed Subjects, otherwise well-affected, and inclined to join and adventure in so noble, christian, and worthy an Action, have been discouraged from the same, but also the utter Overthrow and Ruin of the said Enterprise hath been greatly endangered, which cannot miscarry without some Dishonour to Us and our Kingdom;

XV. Now, forasmuch as it appeareth unto us, that these Insolences, Misdemeanors, and Abuses, not to be tolerated in any civil Government, have, for the most part, grown and proceeded, in regard our said Council have not any direct Power and Authority, by any express Words in our former Letters Patents, to correct and chastise such Offenders; We therefore, for more speedy Reformation of so great and enormous Abuses and Misdemeanors, heretofore practised and committed, and for the preventing of the like hereafter, do . . . GIVE AND GRANT to the said

Treasurer and Company, and their Successors for ever, that it shall and may be lawful for our said Council for the said first Colony in *Virginia*, or any two of them (whereof the said Treasurer, or his Deputy . . ., to be always one) by Warrant under their Hands, to send for, or to cause to be apprehended, all and every such Person and Persons, who shall be noted, or accused, or found, at any time or times hereafter, to offend, or misbehave themselves, in any the Offences before mentioned and expressed; And upon the Examination of any such Offender or Offenders, and just Proof made by Oath, taken before the said Council, of any such notorious Misdemeanors by them committed, as aforesaid; And also upon any insolent, and contemptuous, or indecent Carriage and Misbehaviour, to or against our said Council, shewed or used by any such Person or Persons, so called, convented, and appearing before them, as aforesaid; That in all such Cases, they, our said Council, or any two of them, for the time being, shall and may have full Power and Authority, either here to bind them over with good Sureties for their good Behaviour, and further therein to proceed, to all Intents and Purposes, as it is used, in other like Cases, within our Realm of *England;* Or else, at their Discretions, to remand and send back, the said Offenders, or any of them, unto the said Colony in *Virginia*, there to be proceeded against and punished, as the Governor, Deputy, or Council there . . . shall think meet; or otherwise, according to such Laws and Ordinances, as are and shall be in Use there, for the Well-ordering and good Government of the said Colony.

XVI. And for the more effectual Advancing of the said Plantation, we do further . . . Give and Grant, unto the said Treasurer and Company, full Power and Authority, free Leave, Liberty, and Licence, to set forth, erect, and publish, one or more Lottery or Lotteries, to have Continuance, and to endure and be held, for the Space of our [one] whole Year, next after the Opening of the same; And after the End and Expiration of the said Term, the said Lottery or Lotteries to continue and be further kept, during our Will and Pleasure only, and not otherwise. And yet nevertheless, we are contented and pleased, for the Good and Welfare of the said Plantation, that the said Treasurer and Company shall, for the Dispatch and Finishing of the said Lottery or Lotteries, have six Months Warning after the said Year ended, before

our Will and Pleasure shall, for and on that Behalf, be construed, deemed, and adjudged, to be in any wise altered and determined.

XVII. And our further Will and Pleasure is, that the said Lottery and Lotteries shall and may be opened and held, within our City of *London*, or in any other City or Town, or elsewhere, within this our Realm of *England*, with such Prizes, Articles, Conditions, and Limitations, as to them, the said Treasurer and Company, in their Discretions, shall seem convenient:

XVIII. And it shall and may be lawful, to and for the said Treasurer and Company, to elect and choose Receivers, Auditors, Surveyors, Commissioners, or any other Officers whatsoever, at their Will and Pleasure, for the better marshalling, disposing, guiding, and governing of the said Lottery and Lotteries; And that it shall likewise be lawful, to and for the said Treasurer and any two of the said Council, to minister to all and every such Person, so elected and chosen for Officers, as aforesaid, one or more Oaths, for their good Behaviour, just and true Dealing, in and about the said Lottery or Lotteries, to the Intent and Purpose, that none of our loving Subjects, putting in their Names, or otherwise adventuring in the said general Lottery or Lotteries, may be, in any wise, defrauded and deceived of their said Monies, or evil and indirectly dealt withal in their said Adventures.

XIX. And we further Grant, in Manner and Form aforesaid, that it shall and may be lawful, to and for the said Treasurer and Company, under the Seal of our said Council for the Plantation, to publish, or to cause and procure to be published, by Proclamation or otherwise (the said Proclamation to be made in their Name, by virtue of these Presents) the said Lottery or Lotteries, in all Cities, Towns, Burroughs, and other Places, within our said Realm of *England;* And we Will and Command all Mayors, Justices of Peace, Sherifs, Bailiffs, Constables, and other Officers and loving Subjects, whatsoever, that, in no wise, they hinder or delay the Progress and Proceedings of the said Lottery or Lotteries, but be therein, touching the Premises, aiding and assisting, by all honest, good, and lawful Means and Edeavours.

XX. And further, our Will and Pleasure is, that in all Questions and Doubts, that shall arise, upon any Difficulty of Construction or Interpretation of any Thing, contained in these, or any other our former Letters-patents, the same shall be taken and interpreted, in most ample and beneficial Manner for the said

Treasurer and Company, and their Successors, and every Member thereof.

XXI. And lastly, we do, by these Presents, RATIFY AND CONFIRM unto the said Treasurer and Company, and their Successors, for ever, all and all Manner of Privileges, Franchises, Liberties, Immunities, Preheminences, Profits, and Commodities, whatsoever, granted unto them in any our former Letters-patents, and not in these Presents revoked, altered, changed, or abridged.

* * * * * * * * * * *

No. 4. Patent of the Council for New England

November 3/13, 1620

ALTHOUGH the attempt of the northern, or Plymouth, Company, provided for by the Virginia charter of 1606, to establish a colony at Popham had failed, the Company was not disposed to favor the action of the London Company in issuing licenses for fishing voyages to the northward. Sir Ferdinando Gorges, the leading member of the Plymouth Company, had aided private expeditions to the region within the Company's grant. In March, 1619/20, Gorges, together with prominent members of the nobility and others, petitioned for a new charter, with the monopoly of fishing. A protest from the Virginia Company against the monopoly led to a suggested compromise, by which each colony was to be given a limited right of fishing within the waters of the other; but the provision was not incorporated in the patent, and on Nov. 3/13, 1620, the charter passed the seals. A further petition of the Virginia Company, alleging that the grant was prejudicial to their interests, delayed the delivery of the patent until June 18/28, 1621, when Parliament ordered its delivery, and the incorporation of the fisheries suggestion upon renewal. The patent, however, was never renewed. The influence of Gorges was sufficient to offset the opposition to monopolies in the Parliament of 1621; but in the session of 1623–24 the patent was denounced as a monopoly, and the practical importance of the Council came to an end. In July, 1623, the territory of New England was divided by lot among the patentees. A new partition was made in February, 1634/5, in anticipation of the surrender of the patent. None of these grantees obtained royal charters except Gorges, whose grant was confirmed, with additions, in 1639, as the Province of Maine (see No. 15). The patent of the Council for New England was surrendered in 1635, although the Company continued to exist for a few years longer.

REFERENCES. — *Text* in Hazard's *Historical Collections*, I., 103–118. The records of the Council, 1622–1623, 1631–1638, are in the *Proceedings* of the Amer. Antiquarian Society, 1867–68. See also Haven's *History of Grants*

under the Great Council for New England, in Mass. Hist. Soc., Lowell Lectures on "Massachusetts and its Early History"; Brown's *First Republic in America*, 360–390, *passim*.

[The patent begins by reciting the grant of the Virginia charter of 1606, and the subsequent separation of the London and Plymouth companies under the charter of 1609, and continues:]

Now forasmuch as We have been in like Manner humbly petitioned unto by our trusty and well beloved Servant, Sir *fferdinando Gorges*, Knight, Captain of our ffort and Island by Plymouth, and by certain the principal Knights and Gentlemen Adventurers of the said Second Collonye, and by divers other Persons of Quality, who now intend to be their Associates, divers of which have been at great and extraordinary Charge, and sustained many Losses in seeking and discovering a Place fitt and convenient to lay the Foundation of a hopeful Plantation, and have divers Years past by God's Assistance, and their own Endeavours, taken actual Possession of the Continent hereafter mentioned, in our Name and to our Use, as Sovereign Lord thereof, and have settled already some of our People in Places agreeable to their Desires in those Parts, and in Confidence of prosperous Success therein, by the Continuance of God's Devine Blessing, and our Royall Permission, have resolved in a more plentifull and effectual Manner to prosecute the same, and to that Purpose and Intent have desired of Us, for their better Encouragement and Satisfaction herein, and that they may avoide all Confusion, Questions, or Differences between themselves, and those of the said first Collonye, We would likewise be graciously pleased to make certaine Adventurers, intending to erect and establish ffishery, Trade, and Plantacion, within the Territoryes, Precincts, and Lymitts of the said second Colony, and their Successors, one several distinct and entire Body, and to grant unto them, such Estate, Liberties, Priveliges, Enlargements, and Immunityes there, as in these our Letters-Pattents hereafter particularly expressed and declared. And forasmuch as We have been certainly given to understand by divers of our good Subjects, that have for these many Yeares past frequented those Coasts and Territoryes, between the Degrees of Fourty and Fourty-Eight, that there is noe other the Subjects of any Christian King or State, by any Authority from their Soveraignes, Lords, or Princes, actually in Possession

of any of the said Lands or Precincts, whereby any Right, Claim, Interest, or Title, may . . . by that Meanes accrue . . . unto them, or any of them. And also for that We have been further given certainly to knowe, that within these late Yeares there hath by God's Visitation raigned a wonderfull Plague, together with many horrible Slaughters, and Murthers, committed amoungst the Savages and bruitish People there, heertofore inhabiting, in a Manner to the utter Destruction, Devastacion, and Depopulacion of that whole Territorye, so that there is not left for many Leagues together in a Manner, any that doe claime or challenge any Kind of Interests therein, nor any other Superiour Lord or Souveraigne to make Claime thereunto, whereby We in our Judgment are persuaded and satisfied that the appointed Time is come in which Almighty God in his great Goodness and Bountie towards Us and our People, hath thought fitt and determined, that those large and goodly Territoryes, deserted as it were by their naturall Inhabitants, should be possessed and enjoyed by such of our Subjects and People as heertofore have and hereafter shall by his Mercie and Favour, and by his Powerfull Arme, be directed and conducted thither. In Contemplacion and serious Consideracion whereof, Wee have thougt it fitt according to our Kingly Duty, soe much as in Us lyeth, to second and followe God's sacred Will, rendering reverend Thanks to his Divine Majestie for his gracious favour in laying open and revealing the same unto us, before any other Christian Prince or State, by which Meanes without Offence, and as We trust to his Glory, Wee may with Boldness goe on to the settling of soe hopefull a Work, which tendeth to the reducing and Conversion of such Savages as remaine wandering in Desolacion and Distress, to Civil Societie and Christian Religion, to the Inlargement of our own Dominions, and the Advancement of the Fortunes of such of our good Subjects as shall willingly intresse themselves in the said Imployment, to whom We cannot but give singular Commendations for their soe worthy Intention and Enterprize; Wee therefore . . . Do . . . grant . . . that all that Circuit, Continent, Precincts, and Limitts in America, lying and being in Breadth from Fourty Degrees of Northerly Latitude, from the Equnoctiall Line, to Fourty-eight Degrees of the said Northerly Latitude, and in Length by all the Breadth aforesaid throughout the Maine Land, from Sea to Sea, with all the Seas, Rivers, Islands, Creekes, Inletts Ports, and

Havens, within the Degrees . . . of the said Latitude and Longitude, shall be the Limitts . . . of the second Collony: And to the End that the said Territoryes may forever hereafter be more particularly and certainly known and distinguished, our Will and Pleasure is, that the same shall from henceforth be nominated, termed, and called by the Name of New-England, in America. . . . And for the better Plantacion, ruling, and governing of the aforesaid New-England, in America, We . . . ordaine . . . that from henceforth, there shall be . . . in our Towne of Plymouth, in the County of Devon, one Body politicque and corporate, which shall have perpetuall Succession, which shall consist of the Number of fourtie Persons, and no more, which shall be, and shall be called and knowne by the Name the Councill established at Plymouth, in the County of Devon for the planting, ruling, ordering, and governing of New-England, in America; and for that Purpose Wee have, at and by the Nomination and Request of the said Petitioners, granted . . . our right trusty and right well beloved Cosins and Councillors Lodowick, Duke of Lenox, Lord Steward of our Houshold, George Lord Marquess Buckingham, our High Admiral of England, James Marquess Hamilton, William Earle of Pembrocke, Lord Chamberlaine of our Houshold, Thomas Earl of Arundel, and our . . . Cosin, William Earl of Bathe, and [*our*] . . . Cosin and Councellor, Henry Earle of Southampton, and our . . . Cousins, William Earle of Salisbury, and Robert Earle of Warwick, and . . . John Viscount Haddington, and our Councellor Edward Lord Zouch, Lord Warden of our Cinque Ports, and . . . Edmond Lord Sheffield, Edward Lord Gorges, and . . . Sir Edward Seymour, Knight and Barronett, Sir Robert Manselle, Sir Edward Zouch, our Knight Marshall, Sir Dudley Diggs, Sir Thomas Roe, Sir fferdinando Gorges, Sir Francis Popham, Sir John Brook, Sir Thomas Gates, Sir Richard Hawkins, Sir Richard Edgcombe, Sir Allen Apsley, Sir Warwick Hale, Sir Richard Catchmay, Sir John Bourchier, Sir Nathaniel Rich, Sir Edward Giles, Sir Giles Mompesson, and Sir Thomas Wroth, Knights; and . . . Matthew Suttcliffe, Dean of Exeter, Robert Heath, Esq; Recorder of our Cittie of London, Henry Bourchier, John Drake, Rawleigh Gilbert, George Chudley, Thomas Hamon, and John Argall, Esquires, to be . . . the first . . . Councill . . . [The Council to have the right to fill vacancies in their membership;

to receive, hold, and dispose of real and personal property; and to sue and be sued. They shall elect from among their number a president, who shall hold office during their pleasure; and they shall have a seal.] And Wee do further . . . grant . . . that it shall . . . be lawfull . . . for the said Councill . . ., in their discretions . . . to admitt such . . . Persons to be made free and enabled to trade . . . unto . . . New-England . . ., and unto every Part and Parcell thereof, or to have . . . any Lands or Hereditaments in New-England . . ., as they shall think fitt, according to the Laws, Orders, Constitutions, and Ordinances, by the said Councill and their Successors from time to time to be made and established by Virtue of, and according to the true Intent of these Presents, and under such Conditions, Reservations, and agreements as the said Councill shall set downe, order and direct, and not otherwise. And further . . . Wee . . . grant full Power and Authority to the said Councill . . . [to] nominate, make, constitute, ordaine, and confirme by such Name or Names, Sale or Sales, as to them shall seeme Good; and likewise to revoke, discharge, change, and alter, as well all and singular, Governors, Officers, and Ministers, which hereafter shall be by them thought fitt and needful to be made or used, as well to attend the Business of the said Company here, as for the Government of the said Collony and Plantation, and also to make . . . all Manner of Orders, Laws, Directions, Instructions, Forms, and Ceremonies of Government and Magistracy fitt and necessary for any concerning the Government of the said Collony and Plantation, so always as the same be not contrary to the Laws and Statutes of this our Realme of England, and the same att all Times hereafter to abrogate, revoke, or change, not only within the Precincts of the said Collony, but also upon the Seas in going and coming to and from the said Collony, as they in their good Discretions shall thinke to be fittest for the good of the Adventurers and Inhabitants there. [The governor may exercise martial law, in case of insurrection, and shall have full power to enforce upon individuals the laws and ordinances of the Council. Goods fraudulently transported to a foreign country, under pretence of landing them within the limits of this grant, are to be forfeited, with the vessel.] And Wee do further . . . absolutely give, grant, and confirm unto the said Councill . . . all the aforesaid Lands . . . together also, with the Firme Lands, Soyles,

Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines, and Mineralls, as well Royall Mines of Gold and Silver, as other Mine[s] and Mineralls, precious Stones, Quarries, and all, and singular other Comodities, Jurisdictions, Royalties, Priveliges, Franchises, and Preheminences, both within the same Tract of Land upon the Maine, and also within the said Islands and Seas adjoining: Provided always, that the said Islands, or any of the Premises herein before mentioned . . . be not actually possessed or inhabited by any other Christian Prince or Estate, nor be within the Bounds, Limitts, or Territoryes, of that Southern Collony heretofore by us granted to be planted by diverse of our loving Subjects in the South Part . . ., to be holden of Us . . . as of our Manor of East-Greenwich, in our County of Kent, in free and comon Soccage and not in Capite nor by Knight's Service; yielding and paying therefore to Us . . . the fifth Part, of the Ore of Gold and Silver, which . . . shall happen to be found . . . in or within any the said Lands . . ., for, or in Respect of all, and all Manner of Dutys, Demands, and Services whatsoever, to be done, made, or paid to Us . . . And Wee do further . . . grant to the said Councell . . . that it shall be lawfull and free for them . . ., att all . . . times hereafter, out of our Realmes or Dominions whatsoever, to take, load, carry, and transport in, and into their Voyages, and for, and towards the said Plantation in New-England, all such . . . of our loveing Subjects, or any other Strangers that will become our loving Subjects, and live under our Allegiance, as shall willingly accompany them in the said Voyages and Plantation, with Shipping, Armour, Weapons, Ordinance, Munition, Powder, Shott, Victuals, and all Manner of Cloathing, Implements, Furniture, Beasts, Cattle, Horses, Mares, and all other Things necessary for the said Plantation, and for their Use and Defence, and for Trade with the People there, and in passing and returning to and fro, without paying or yeilding, any Custom or Subsidie either inward or outward, to Us, . . . for the same, for the Space of seven Years, from the Day of the Date of these Presents, provided, that none of the said Persons be such as shall be hereafter by special Name restrained by Us . . . And for their further Encouragement . . ., We . . . grant, to and with the said Councill . . ., their Factors and Assignes, that they . . . shall be free and quitt from all Subsidies and Customes in New-England for the Space of seven Years, and from all Taxes and Impositions

for the Space of twenty and one Yeares, upon all Goods and Merchandizes att any time or times hereafter, either upon Importation thither, or Exportation from thence into our Realme of England, or into any our Dominions by the said Council . . ., [except the five *per cent.* customs duty, which being paid, the said goods may, within thirteen months after being landed, be exported. The Council may grant land to adventurers and others, have regard to the share and special merit of each.] and wee do also . . . grant to the said Councell . . . and to all . . . such Governours, or Officers, or Ministers, as by the said Councill shall be appointed to have Power and Authority of Government and Command in and over the said Collony and Plantation, that they . . . shall, and lawfully may, . . . for their severall Defence and Safety, encounter, expulse, repel, and resist by Force of Arms, as well by Sea as by Land, and all Ways and Meanes whatsoever, all such . . . Persons, as without the speciall Licence of the said Councell . . . shall attempt to inhabitt within the said severall Precincts and Limitts of the said Collony and Plantation. And also all . . . such . . . Persons . . . as shall enterprize or attempt att any time hereafter Destruction, Invasion, Detriment, or Annoyance to the said Collony and Plantation; and that it shall be lawfull for the said Councill . . . to take and surprize by all Ways and Meanes whatsoever, all . . . such . . . Persons . . ., with their Ships, Goods, and other Furniture, trafficking in any Harbour, Creeke, or Place, within the Limitts and Precin[c]tes of the said Collony . . ., and not being allowed by the said Councill to be Adventurers or Planters of the said Collony. And . . . Wee . . . grant unto the said Councill . . . , that the said Territoryes . . . shall not be visited, frequented, or traded unto, by any other of our Subjects, . . . either from any the Ports and Havens belonging or appertayning . . . unto Us, . . . or to any forraigne State, Prince, or Pottentate whatsoever: And therefore, Wee do hereby . . . charge . . . all the Subjects of Us . . ., of what Degree and Quality soever, they be, that none of them, directly, or indirectly, presume to vissitt, frequent, trade, or adventure or traffick into, or from the said Territoryes, . . . other than the said Councill and their Successors, ffactors, Deputys, and Assignes, unless it be with the License and Consent of the said Councill and Company first had and obtained in Writing, under the comon Seal, upon Pain of our Indignation and Im-

prisonment of their Bodys during the Pleasure of Us, . . . and the Forfeiture and Loss both of theire Ships and Goods, wheresoever they shall be found either within any of our Kingdomes or Dominions, or any other Place or Places out of our Dominions. And for the better effecting of our said Pleasure heerin, Wee . . . give and grant full Power and Authority unto the said Councill, . . . their Factors, Deputyes, or Assignes, . . . [to] seize all and all Manner of Ship and Ships, Goods, Wares, and Merchandizes whatsoever, which shall be bro't from or carried to the Places before mentioned, or any of them, contrary to our Will and Pleasure, before in these Presents expressed. [Property so forfeited to be divided equally between the Council and the King.] And we . . . do condiscend, and grant to and with the said Councill . . ., that Wee . . . will not give and grant any Lybertye, License, or Authority to any Person or Persons whatsoever, to saile, trade or trafficke unto the aforesaid parts of New-England, without the good Will and Likinge of the said Councill, or the greater Part of them for the Time beinge, att any their Courts to be assembled. And Wee do . . . grant unto the said Councill . . . that whensoever . . . any Custome or Subsidie shall growe due or payable unto Us . . . according to the Limitation and Appointment aforesaid, by reason of any Goods, Wares, [*or*] Merchandizes, to be shipped out, or any Returne to be made of any Goods, Wares, or Merchandizes, unto or from New-England, or any the Lands [*or*] Territoryes aforesaid, that . . . the ffarmers, Customers, and Officers of our Customes of England and Ireland . . ., upon Request made unto them by the said Councill . . ., and upon convenient Security to be given in that Behalfe, shall . . . allowe unto the said Councill . . . and to all . . . Persons free of the said Company as aforesaid, six Months Time for the Payment of the one halfe of all such Custome and Subsidie . . . Nevertheless, . . . if any of the said Goods . . . shall be . . . landed and exported out of any of our Realmes aforesaid, and shall be shipped with a Purpose not to be carried to New-England aforesaid, . . . then such . . . Custome . . . or Forfeiture, shall be paid, and belong to Us . . ., for the said Goods . . . so fraudulently sought to be transported, as if this our Grant had not been made nor granted: And Wee do . . . grant . . . that the said President of the said Company, or his Deputy for the Time being, or any two others of the said Councill . . . shall . . . have full

Power and Authority, to minister and give the Oath and Oaths of Allegiance and Supremacy . . . to all . . . Persons, which shall att any Time . . . goe or pass to the said Collony in New-England. [The same officers may also administer oaths in matters touching the business and interests of the Company.] And to the End that no lewd or ill-disposed Persons, Saylors, Soldiers, Artificers, Labourers, Husbandmen, or others, which shall receive Wages, Apparel, or other Entertainment from the said Councill, or contract and agree with the said Councill to goe, and to serve, and to be imployed, in the said Plantation, in the Collony of New-England, do afterwards withdraw, hide, and conceale themselves, or refuse to go thither, after they have been so entertained and agreed withall; and that no Persons which shall be sent and imployed in the said Plantation . . ., upon the Charge of the said Councill, doe misbehave themselves by mutinous Seditions, or other notorious Misdemeanors, or which shall be imployed, or sent abroad by the Governour of New-England or his Deputy, with any Shipp or Pinnace, for Provision for the said Collony, or for some Discovery, or other Business or Affaires concerninge the same, doe from thence either treacherously come back againe, or returne into the Realme of Englande by Stealth, or without Licence of the Governour of the said Collony . . ., or be sent hither as Misdoers or Offendors; and that none of those Persons after theire Returne from thence, being questioned by the said Councill heere, for such their Misdemeanors and Offences, do, by insolent and contemptuous Carriage in the Presence of the said Councill shew little Respect and Reverence, either to the Place or Authority in which we have placed and appointed them and others, for the clearing of their Lewdness and Misdemeanors committed in New-England, divulge vile and scandalous Reports of the Country of New-England, or of the Government or Estate of the said Plantation and Collony, to bring the said Voyages and Plantation into Disgrace and Contempt, by Meanes whereof, not only the Adventurers and Planters already engaged in the said Plantation may be exceedingly abused and hindered, and a great Number of our loveing and well-disposed Subjects, otherways well affected and inclined to joine and adventure in so noble a Christian and worthy Action may be discouraged from the same, but also the Enterprize itself may be overthrowne, which cannot miscarry without some Dishonour to Us and our

Kingdome: [the President, or other duly authorized representative of the Company, is empowered to cause such persons to be apprehended; and, upon examination and proof before the Council, such persons shall either be bound over with sureties for their good behavior, according to the law of England, or be returned to New England to be dealt with by the Company. Any persons, whether members of the colony or acting under the authority of the Council, who shall commit any robbery or other hostile act, by sea or land, against a subject of England or of any other friendly power, shall, upon royal proclamation, make full restitution and satisfaction, under penalty of outlawry. English subjects settling in the colony, and their children there born, shall have all the rights of natural born Englishmen. None are to be permitted to go to New England except such as shall first take the oaths of supremacy, to be administered by the President of the Council.] And Wee also . . . do covenant and grant to and with the said Councill, . . . that if the Councill . . . shall at any time or times heereafter, upon any Doubt which they shall conceive concerning the Strength or Validity in Law of this our present Grant, or be desirous to have the same renewed and confirmed by Us . . ., with Amendment of such Imperfections and Defects as shall appeare fitt and necessary to the said Councill . . ., to be reformed and amended on the Behalfe of Us . . ., and for the furthering of the Plantation and Government, or the Increase, continuing, and flourishing thereof, that then, upon the humble Petition of the said Councill . . ., to Us . . ., Wee . . . will forthwith make and pass under the Great Seale of England . . ., to the said Councill . . ., such further and better Assurance, of all and singular the Lands, Grounds, Royalties, Priveliges, and Premisses aforesaid granted, or intended to be granted, according to our true Intent and Meaneing . . ., as by the learned Councill of Us . . . and of the said Company . . . shall, in that Behalfe, be reasonably devised or advised. [In case of doubt, the grant to be construed in favor of the Company.] And Wee do further . . . charge and comand all and singular Admirals, Vice-Admirals, Generals, Comanders, Captaines, Justices of Peace, Majors, Sheriffs, Bailiffs, Constables, Customers, Comptrollers, Waiters, Searchers, and all the Officers of Us . . ., in all Things aiding, helping, and assisting unto the said Councill . . ., upon Request . . . by them to be made, in all Matters

and Things, for the furtherance and Accomplishment of all or any the Matters and Things by Us, in and by these our Letters-Pattents, given, granted, and provided, or by Us meant or intended to be given, granted, and provided, as they our said Officers . . . do tender our Pleasure, and will avoid the contrary att their Perills. [Privileges formerly granted are confirmed, save as altered by the present charter.]

No. 5. Mayflower Compact

November 11/21, 1620

THE Mayflower Compact, drawn up on shipboard, was intended not only as a basis for the government of the colony in the absence of a patent, but also, according to Bradford, as an offset to the "discontented and mutinous speeches" of some of the company, to the effect that when they landed "they would use their own liberty; for none had power to command them, the patent they had being for Virginia, and not for New England, which belonged to another government, with which the Virginia Company had nothing to do." For the efforts of the colony to obtain a charter, see note to No. 11.

REFERENCES. — *Text* in Bradford's *History of Plymouth Plantation*, Mass. Hist. Coll., Fourth Series, III., 89, 90. Bradford does not give a list of signers. On the early history of the Plymouth Colony, see Mourt's *Relation* (Dexter's ed., 1865); Morton's *New England Memorial;* Young's *Chronicles of the Pilgrim Fathers*, 1602–1625; Arber's *Story of the Pilgrim Fathers;* Winsor's *Narrative and Critical History*, III., chap. 8; Doyle's *Puritan Colonies*, I., chap. 2. The laws of the colony, 1623–1682, are in the *Plymouth Colony Records*, XI.

In the name of God, Amen. We whose names are underwriten, the loyall subjects of our dread soveraigne Lord, King James, by the grace of God, of Great Britaine, Franc, & Ireland king, defender of the faith, &c., haveing undertaken, for the glorie of God, and advancemente of the Christian faith, and honour of our king & countrie, a voyage to plant the first colonie in the Northerne parts of Virginia, doe by these presents solemnly & mutualy in the presence of God, and one of another, covenant & combine our selves togeather into a civill body politick, for our better ordering & preservation & furtherance of the ends aforesaid; and by vertue hearof to enacte, constitute, and frame such just & equall lawes, ordinances, acts, constitutions, & offices, from time to time, as shall be thought most meete & convenient for the generall good of the Colonie, unto which we promise all due sub-

mission and obedience. In witnes wherof we have hereunder subscribed our names at Cap-Codd the 11. of November, in the year of the raigne of our soveraigne lord, King James, of England, France, & Ireland the eighteenth, and of Scotland the fiftie fourth. Anno: Dom. 1620.

No. 6. Ordinance for Virginia

July 24/August 3, 1621

THE first assembly in Virginia, and the first representative assembly in America, was convened July 30/Aug. 9, 1619, by Governor Yeardley, under authority of a commission executed by the Virginia Company in November, 1618; and the ordinance of 1621, probably of similar tenor, granted to the colony for the future the same form of government. The model here outlined was closely followed by the later English colonies.

REFERENCES. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix IV. The records of the assembly of 1619 are in Hening's *Statutes at Large*, I. The "Orders and Constitutions" of 1619–1620 are in Force's *Tracts*, III. See also W. W. Henry's *First Legislative Assembly in America*, in Report of Amer. Hist. Assoc., 1893, pp. 301–316; Brown's *First Republic in America*, 308–324.

An Ordinance and Constitution of the Treasurer, Council, and Company in England, *for a Council of State and General Assembly.*

I. To all People, to whom these Presents shall come, be seen, or heard, The Treasurer, Council, and Company of Adventurers and Planters for the city of *London* for the first Colony of *Virginia*, send Greeting. KNOW YE, that we, the said Treasurer, Council, and Company, taking into our careful Consideration the present State of the said Colony of Virginia, and intending, by the Divine Assistance, to settle such a Form of Government there, as may be to the greatest Benefit and Comfort of the People, and whereby all Injustice, Grievances, and Oppression may be prevented and kept off as much as possible from the said Colony, have thought fit to make our Entrance, by ordering and establishing such Supreme Councils, as may not only be assisting to the Governor for the time being, in the Administration of Justice, and the Executing of other Duties to this Office belonging, but also, by their vigilant Care and Prudence, may provide, as

well for a Remedy of all Inconveniences, growing from time to time, as also for the advancing of Increase, Strength, Stability, and Prosperity of the said Colony:

II. We therefore, the said Treasurer, Council, and Company, by Authority directed to us from his Majesty under the Great Seal, upon Mature Deliberation, do hereby order and declare, that, from hence forward, there shall be Two Supreme Councils in *Virginia*, for the better Government of the said Colony aforesaid.

III. The one of which Councils, to be called The Council of State (and whose Office shall chiefly be assisting, with their Care, Advice, and Circumspection, to the said Governor) shall be chosen, nominated, placed, and displaced, from time to time, by Us, the said Treasurer, Council, and Company, and our Successors: Which Council of State shall consist, for the present, only of these persons, as are here inserted, *viz.* Sir *Francis Wyat*, Governor of *Virginia*, Captain *Francis West*, Sir *George Yeardley*, Knight, Sir *William Neuce*, Knight Marshal of *Virginia*, Mr. George *Sandys*, Treasurer, Mr. George *Thorpe*, Deputy of the College, Captain *Thomas Neuce*, Deputy for the Company, Mr. *Pawlet*, Mr. *Leech*, Captain *Nathaniel Powel*, Mr. *Christopher Davison*, Secretary, Dr. *Pots*, Physician to the Company, Mr. *Roger Smith*, Mr. *John Berkeley*, Mr. *John Rolfe*, Mr. *Ralph Hamer*, Mr. *John Pountis*, Mr. *Michael Lapworth*, Mr. *Harwood*, Mr. *Samuel Macock*. Which said Counsellors and Council we earnestly pray and desire, and in his Majesty's Name strictly charge and command, that (all Factions, Partialities, and sinister Respect laid aside (they bend their Care and Endeavours to assist the said Governor; first and principally, in the Advancement of the Honour and Service of God, and the Enlargement of his Kingdom amongst the Heathen People; and next, in erecting of the said Colony in due Obedience to his Majesty, and all lawful Authority from his Majesty's Directions; and lastly, in maintaining the said People in Justice and *Christian* Conversation amongst themselves, and in Strength and Ability to withstand their Enemies. And this Council, to be always, or for the most Part, residing about or near the Governor.

IV. The other Council, more generally to be called by the Governor, once Yearly, and no oftener, but for very extraordinary and important Occasions, shall consist, for the present, of the

said Council of State, and of two Burgesses out of every Town, Hundred, or other particular Plantation, to be respectively chosen by the Inhabitants: Which Council shall be called THE GENERAL ASSEMBLY, wherein (as also in the said Council of State) all Matters shall be decided, determined, and ordered, by the greater Part of the Voices then present; reserving to the Governor always a Negative Voice. And this General Assembly shall have free Power to treat, consult, and conclude, as well of all emergent Occasions concerning the Publick Weal of the said Colony and every Part thereof, as also to make, ordain, and enact such general Laws and Orders, for the Behoof of the said Colony, and the good Government thereof, as shall, from time to time, appear necessary or requisite;

V. WHEREAS in all other Things, we require the said General Assembly, as also the said Council of State, to imitate and follow the Policy of the Form of Government, Laws, Customs, and Manner of Trial, and other Administration of Justice, used in the Realm of *England*, as near as may be, even as ourselves, by his Majesty's Letters Patent are required.

VI. PROVIDED, that no Law or Ordinance, made in the said General Assembly, shall be or continue in Force or Validity, unless the same shall be solemnly ratified and confirmed, in a General Quarter Court of the said Company here in *England*, and so ratified, be returned to them under our Seal; It being our Intent to afford the like Measure also unto the said Colony, that after the Government of the said Colony shall once have been well framed, and settled accordingly, which is to be done by Us, as by Authority derived from his Majesty, and the same shall have been so by us declared, no Orders of Court afterwards shall bind the said Colony, unless they be ratified in like Manner in the General Assemblies.

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No. 7. Grant of Maine to Gorges and Mason

August 10/20, 1622

JOHN MASON was a member of the Council for New England, a churchman, and a friend of Gorges. His chief interests in America seem to have been in connection with the Laconia Company, organized to carry on the fur trade

with Canada; and he did not develop any of the various grants received from the Council for New England. Only so much of the patent of 1622 is here given as defines the boundaries of the grant.

REFERENCES. — *Text* in Ballard's *Memorial Volume of the Popham Celebration*, Appendix, 121–123.

[The patent recites the grant of 1620 to the Council for New England, and continues:]

Now this Indenture witnesseth that the said President and Councill . . . doe give grant . . . and confirme unto the said Sir Ferdinando Gorges & Captain John Mason their heirs and assignes all that part of the maine land in New England lying upon the Sea Coast betwixt the rivers of Merrimack & Sagadahock and to the furthest heads of the said Rivers and soe forwards up into the land westward untill threescore miles be finished from the first entrance of the aforesaid rivers and half way over that is to say to the midst of the said two rivers which bounds and limitts the lands aforesaid togeather with all Islands & Isletts within five leagues distance of the said premisses and abutting upon the same or any part or parcell thereoff . . . which said porcons of lands with the appurtenances the said Sir Ferdinando Gorges and Capt. John Mason with the consent of the President & Councell intend to name the PROVINCE OF MAINE. . . .

No. 8. First Charter of Massachusetts

March 4/14, 1628/9

THE attempt of the Dorchester Adventurers to establish a colony on Cape Ann, in 1623, as a base for fishing operations, failed; but there were a few scattered settlements in the region of Massachusetts Bay when, March 19/29, 1627/8, a grant for a land and trading company was obtained from the Council for New England. The patent was confirmed, with the addition of powers of government, by the royal charter of March 4/14, 1628/9. A local government, known as "London's Plantation in Massachusetts Bay in New England," was established at Salem, under the direction of John Endicott. In 1630 the charter and government of the colony were transferred to America, and the local government under Endicott was discontinued. The charter remained in force until 1684, when it was annulled by writ of *quo warranto*.

REFERENCES. — *Text* in *Records of the Governor and Company of the Massachusetts Bay in New England*, I., 3–19. The grant of 1627/8 is recited in the charter. Important contemporary documents and accounts are collected in Young's *Chronicles of Massachusetts*. See also Winthrop's *His-*

tory of New England (Savage's ed.), I.; Winthrop's *Life and Letters of John Winthrop*, II.; *Memorial History of Boston*, I., 87–98; Ellis's *Puritan Age and Rule*, chaps. 2 and 7; Sainsbury's *Calendar of State Papers*, Colonial, I.; Doyle's *Puritan Colonies*, I., chap. 3.

[The charter begins with a recital of the patent of 1620 to the Council for New England, and the subsequent grant by the Council, in March, 1627/8, to Sir Henry Rosewell and others, which last-mentioned grant is by this present charter confirmed, and continues:]

And further knowe yee, That . . . Wee . . . by theis presents doe . . . give and graunt unto the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Symon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, theire heires and assignes, All that parte of Newe England in America which lyes and extendes betweene a great river there commonlie called Monomack river, alias Merrimack river, and a certen other river there called Charles river, being in the bottome of a certen bay there commonlie called Massachusetts, alias Mattachusetts, alias Massatusetts bay: And also all and singuler those landes and hereditaments whatsoever, lyeing within the space of three Englishe myles on the south parte of the saide river called Charles river, or of any or every parte thereof: And also all and singuler the landes and hereditaments whatsoever lyeing and being within the space of three Englishe myles to the southward of the southernmost parte of the said baye called Massachusetts . . . : And also all those landes and hereditaments whatsoever which lye and be within the space of three English myles to the northward of the saide river called Monomack, alias Merrymack, or to the northward of any and every parte thereof, and all landes and hereditaments whatsoever, lyeing within the lymitts aforesaide, north and south, in latitude and bredth, and in length and longitude, of and within all the bredth aforesaide, throughout the mayne landes there from the Atlantick and westerne sea and ocean on the east parte, to the south sea on the west parte: . . . and also all islandes in America aforesaide, in the

saide seas, or either of them, on the westerne or easterne coastes, or partes of the said tracts of landes hereby mentioned to be given and graunted . . ., and all mynes and myneralls, aswell royall mynes of gould and silver as other mynes and myneralls whatsoever . . ., and free libertie of fishing in or within any the rivers or waters within the boundes and lymytts aforesaid, and the seas thereunto adjoining: And all fishes, royal fishes, whales, balan, sturgions, and other fishes, of what kinde or nature soever that shall . . . be taken in . . . the saide seas or waters . . . by the said Sir Henry Rosewell . . . [and others] . . . or by any person or persons whatsoever there inhabiting, by them, or any of them, to be appointed to fishe therein. PROVIDED, alwayes, that yf the said landes, islandes, or any other the premisses herein before mentioned, and by theis presents intended and meant to be graunted, were, at the tyme of the graunting of the saide former letters patents . . . [of 1620] . . . actuallie possessed or inhabited by any other Christian Prince or State, or were within the boundes . . . of that Southerne Colony then before graunted by our said late father to be planted . . . in the south partes of America, That then this present graunt shall not extend to any such partes . . ., but as to those partes . . . shalbe utterly voyd. . . . [To be held in free and common socage, and paying one fifth part of all gold and silver ores.] AND FORASMUCH as the good and prosperous successe of the plantation of the saide partes of Newe England aforesaide intended by the said Sir Henry Rosewell . . . [and others] . . . to be speedily sett upon, cannot but cheifly depend, next under the blessing of Almightie God and the support of our royall authoritie, upon the good government of the same, To the ende that the affaires and buyssinesses which, from tyme to tyme, shall happen and arise concerning the saide landes and the plantation of the same, maie be the better mannaged and ordered . . . wee will and ordeyne, That the saide Sir Henry Rosewell . . . [and others] . . ., and all such others as shall hereafter be admitted and made free of the Company and Society hereafter mentioned, shall . . . be . . . one body corporate and politique in fact and name, by the name of the Governor and Company of the Mattachusetts Bay in Newe England . . ., and by that name they shall have perpetuall succession: And that by the same name they . . . shall, and maie be capeable and enabled, aswell to implead and to be impleaded, and to prosecute, de-

maund, and aunswere, and be answeared unto, in all . . . suites, causes, quarrells, and actions of what kinde or nature soever. And also to . . . acquire . . . any landes, tenements, or hereditaments, or any goodes or chattells, And the same to . . . dispose of as other our liege people of this our realme of England, or any other corporation or body politique of the same maie lawfullie doe: [They may have a seal.] And wee doe hereby . . . graunte, That . . . there shalbe one Governor, one Deputy Governor, and eighteene Assistants . . ., to be from tyme to tyme . . . chosen out of the freemen of the saide Company, for the tyme being, in such manner and forme as hereafter in theis presents is expressed. Which said officers shall applie themselves to take care for the best disposeing and ordering of the generall buysines and affaires of . . . the saide landes and premisses . . ., and the plantacion thereof, and the government of the people there. And for the better execution of our royall pleasure and graunte in this behalf, wee doe . . . nominate . . . the saide Mathewe Cradocke to be the first and present Governor of the said Company, and the saide Thomas Goffe to be Deputy Governor . . ., and the said Sir Richard Saltonstall, Isaack Johnson, Samuell Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetcombe, Increase Noell, Richard Pery, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion to be the present Assistants . . ., to continue in the saide severall offices respectivelie for such tyme and in such manner as in and by theis presents is hereafter declared and appointed. [The Governor or Deputy Governor may give order for the assembling of the Company.] And that the said Governor, Deputie Governor, and Assistants . . . shall or maie once every moneth, or oftener at their pleasures, assemble, and houlde, and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their affaires. [Seven or more Assistants, with the Governor or Deputy Governor, to be a sufficient Court.] and that there shall or maie be held . . ., upon every last Wednesday in Hillary, Easter, Trinity, and Michas termes respectivelie for ever, one greate, generall, and solempe Assemblie, which foure Generall Assemblies shalbe stiled and called the Foure Greate and Generall Courts of the saide Company: In all and every or any of which saide Greate and Generall

Courts soe assembled, WEE DOE . . . graunte . . . That the Governor, or, in his absence, the Deputie Governor . . . and such of the Assistants and freemen . . . as shalbe present, or the greater nomber of them soe assembled, whereof the Governor or Deputie Governor and six of the Assistants, at the least to be seaven, shall have full power and authoritie to choose, nominate, and appointe such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into the same to admitt, and to elect and constitute such officers as they shall thinke fitt and requisite for the ordering, mannaging, and dispatching of the affaires of the saide Governor and Company. . . . And wee doe . . . ordeyne, That yearely once in the yeare for ever hereafter, namely, the last Wednesday in Easter tearme yearely, the Governor, Deputy Governor, and Assistants . . ., and all other officers of the saide Company, shalbe, in the Generall Court or Assembly to be held for that day or tyme, newly chosen for the yeare ensueing by such greater parte of the said Company for the tyme being, then and there present, as is aforesaide. [Vacancies caused by the death or removal of any officer of the Company may be filled by new elections. All officers are required to take an oath for the faithful performance of their duties.] . . . AND wee doe . . . graunt . . ., That it shall . . . be lawfull to and for the Governor or Deputie Governor and such of the Assistants and Freemen of the said Company . . . as shalbe assembled in any of their Generall Courts aforesaide, or in any other Courtes to be specially summoned and assembled for that purpose, or the greater parte of them, (whereof the Governor or Deputie Governor and six of the Assistants, to be alwaies seaven,) from tyme to tyme to make, ordeine, and establishe all manner of wholesome and reasonable orders, lawes, statutes, and ordinances, directions, and instructions not contrarie to the lawes of this our realme of England, aswell for setling of the formes and ceremonies of government and magistracy fitt and necessary for the said plantation and the inhabitants there, and for nameing and stiling of all sortes of officers, both superior and inferior, which they shall finde needefull for that governement and plantation, and the distinguishing and setting forth of the severall duties, powers, and lymytts of every such office and place, and the formes of such oathes warrantable by the lawes and statutes of this our realme of England

as shalbe respectivelie ministred unto them, for the execution of the said severall offices and places, as also for the disposing and ordering of the elections of such of the said officers as shalbe annuall, and of such others as shalbe to succeede in case of death or removeall, and ministring the said oathes to the newe elected officers, and for impositions of lawfull fynes, mulcts, imprisonment, or other lawfull correction, according to the course of other corporations in this our realme of England, and for the directing, ruling, and disposeing of all other matters and thinges whereby our said people, inhabitants there, maie be soe religiously, peaceablie, and civilly governed, as their good life and orderlie conversation maie wynn and incite the natives of [that] country to the knowledg and obedience of the onlie true God and Savior of mankinde, and the Christian fayth, which, in our royall intention and the adventurers free profession, is the principall ende of this plantation. . . . PROVIDED also . . ., That theis presents shall not in any manner enure, or be taken to abridge, barr, or hinder any of our loving subjects whatsoever to use and exercise the trade of fishing upon that coast of New England in America by theis presents mentioned to be graunted: But that they . . . shall have full and free power and liberty to continue and use their said trade of fishing upon the said coast in any the seas thereunto adjoyning, or any armes of the seas or saltwater rivers where they have byn wont to fishe, and to build and sett up upon the landes by theis presents graunted such wharfes, stages, and workehouses as shalbe necessarie for the salting, drying, keeping, and packing up of their fish, to be taken or gotten upon that coast: And to cutt downe and take such trees and other materialls there groweing, or being, or [*as*] shalbe needefull for that purpose, and for all other necessarie easements, helpes, and advantage concerning their said trade of fishing there, in such manner and forme as they have byn heretofore at any tyme accustomed to doe, without making any wilfull waste or spoyle, Any thing in theis presents conteyned to the contrarie notwithstanding. . . .

No. 9. Charter of Privileges to Patroons

June 7/17, 1629

THE government of the Dutch West India Company, chartered in 1621, was vested in five chambers, or boards, established in as many Dutch cities, with a board of nineteen for the exercise of general executive powers. Of the chambers, that of Amsterdam was the most important. The region known as New Netherland was not named in the charter, but was included within the jurisdiction of the Company. On the final organization of the Company under the charter, in 1623, New Netherland was made a province, and placed under the immediate control of the Amsterdam chamber. The continued unprofitableness, however, of the trade of New Netherland, except the fur trade, led to a change of policy; and the Charter of Privileges to patroons, drafted in March, 1628, but not adopted by the board of nineteen until June, 1629, was intended to encourage private individuals to establish settlements at various points on the Hudson and Delaware, or North and South, rivers. Numerous grievances, occasioned by friction between the patroons and the Company, were partially allayed by a new charter in 1640, restricting the area of the grants, and encouraging independent settlement; but the feudal privileges of the patroons were not interfered with. "Many of the old patroon estates long remained undivided, and the heirs of the founders claimed some semi-feudal privileges well into the nineteenth century."

REFERENCES. — *Text* in *Documents relative to the Colonial History of the State of New York*, II., 553–557. On the Dutch West India Company, see O'Callaghan's *History of New Netherland;* the charter of 1621 is in Hazard's *Historical Collections*, I., 121–131. See also Brodhead's *History of New York*, I., chaps. 5 and 6; Winsor's *Narr. and Crit. Hist.*, IV., chap. 8.

FREEDOMS AND EXEMPTIONS

GRANTED BY THE BOARD OF THE NINETEEN OF THE INCORPORATED WEST INDIA COMPANY, TO ALL PATROONS, MASTERS OR PRIVATE PERSONS WHO WILL PLANT COLONIES IN NEW NETHERLAND

I. Such members of the said Company as may be inclined to settle a Colonie in New Netherland, shall be permitted to send in the ships of this Company going thither, three or four persons to inspect the situation of the country, provided that they, with the officers and ship's company, swear to the articles, so far as they relate to them, and pay for provisions and for passage, going and coming, six stivers per diem; and such as desire to eat in the cabin, twelve stivers, and to be subordinate and give assistance like others, in cases offensive and defensive; and if any ships

be taken from the enemy, they shall receive, pro rata, their proportions with the ship's company, each according to his quality; that is to say, the colonists eating out of the cabin shall be rated with the sailors, and those who eat in the cabin with those of the Company's servants who eat at table and receive the lowest wages.

II. Though, in this respect, shall be preferred such persons as have first appeared and desired the same from the Company.

III. All such shall be acknowledged Patroons of New Netherland who shall, within the space of four years next after they have given notice to any of the Chambers of the Company here, or to the Commander or Council there, undertake to plant a Colonie there of fifty souls, upwards of fifteen years old; one-fourth part within one year, and within three years after the sending of the first, making together four years, the remainder, to the full number of fifty persons, to be shipped from hence, on pain, in case of wilful neglect, of being deprived of the privileges obtained; but it is to be observed that the Company reserve the Island of the Manhattes to themselves.

IV. They shall, from the time they make known the situation of the places where they propose to settle Colonies, have the preference to all others of the absolute property of such lands as they have there chosen; but in case the situation should not afterwards please them, or they should have been mistaken as to the quality of the land, they may, after remonstrating concerning the same to the Commander and Council there, be at liberty to choose another place.

V. The Patroons, by virtue of their power, shall and may be permitted, at such places as they shall settle their Colonies, to extend their limits four leagues along the shore, that is, on one side of a navigable river, or two leagues on each side of a river, and so far into the country as the situation of the occupiers will permit; provided and conditioned that the Company keep to themselves the lands lying and remaining between the limits of Colonies, to dispose thereof, when and at such time as they shall think proper, in such manner that no person shall be allowed to come within seven or eight leagues of them without their consent, unless the situation of the land thereabout be such that the Commander and Council, for good reasons, should order otherwise; always observing that the first occupiers are not to be prejudiced in the right they have obtained, other then, unless the service of

the Company should require it, for the building of fortifications, or something of that sort; the command of each bay, river or island, of the first settled Colonie, remaining, moreover, under the supreme jurisdiction of their High Mightinesses the States-General and the Company: but that on the next Colonies being settled on the same river or island, they may, in conjunction with the first, appoint one or more Deputies in order to consider what may be necessary for the prosperity of the Colonies on the said river and island.

VI. They shall forever possess and enjoy all the lands lying within the aforesaid limits, together with the fruits, rights, minerals, rivers and fountains thereof; as also the chief command and lower jurisdictions, fishing, fowling and grinding, to the exclusion of all others, to be holden from the Company as a perpetual inheritance, without it ever devolving again to the Company, and in case it should devolve, to be redeemed and repossessed with twenty guilders per Colonie, to be paid to this Company, at the Chamber here or to their Commander there, within a year and six weeks after the same occurs, each at the Chamber where he originally sailed from; and further, no person or persons whatsoever shall be privileged to fish and hunt but the Patroons and such as they shall permit. And in case any one should in time prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his Colonie, according to his pleasure and to the quality of the persons.

VII. There shall likewise be granted to all Patroons who shall desire the same, venia testandi, or liberty to dispose of their aforesaid heritage by testament.

VIII. The Patroons may, if they think proper, make use of all lands, rivers and woods lying contiguous to them, for and during so long a time as this Company shall grant them to other Patroons or private persons.

IX. Those who shall send persons over to settle Colonies, shall furnish them with proper instructions in order that they may be ruled and governed conformably to the rule of government made, or to be made, by the Board of the Nineteen, as well in the political as in the judicial government; which they shall be obliged first to lay before the Directors of the respective Chambers.

X. The Patroons and colonists shall be privileged to send their people and effects thither, in ships belonging to the Company, provided they take the oath, and pay to the Company for bringing over the people, as mentioned in the first article and for freight of the goods, five per cent, ready money, to be reckoned on the prime cost of the goods here, in which is, however, not to be included such cattle and implements as are necessary for the cultivation and improvement of the lands, which the Company are to carry over without any reward, if there is room in their ships. But the Patroons shall, at their own expense, provide and make places for them, together with everything necessary for the support of the cattle.

XI. In case it should not suit the Company to send any ships, or there should be no room in those sailing thither, then the said Patroons, after having communicated their intentions, and after having obtained consent from the Company in writing, may send their own ships or vessels thither; provided that, in going or coming, they go not out of their ordinary course, giving security to the Company for the same and taking on board an assistant, to be victualed by the Patroons, and paid his monthly wages by the Company, on pain, for doing the contrary, of forfeiting all right and property they have obtained to the Colonie.

XII. Inasmuch as it is intended to people the Island of the Manhattes first, all fruits and wares that are produced on the lands situate on the North river, and lying thereabout, shall, for the present, be brought there before being sent elsewhere, excepting such as are, from their nature, unnecessary there, or such as cannot, without great loss to the owner thereof, be brought there, in which case the owners thereof shall be obliged to give timely notice in writing of the difficulty attending the same to the Company here, or the Commander and Council there, that the same may be remedied as the necessity thereof shall be found to require.

XIII. All the Patroons of Colonies in New Netherland, and of Colonies on the Island of Manhattes, shall be at liberty to sail and traffic all along the coast, from Florida to Terra Neuf, provided that they do again return with all such goods as they shall get in trade to the Island of Manhattes, and pay five per cent duty to the Company, in order, if possible, that, after the necessary inventory of the goods shipped be taken, the same may be

sent hither. And if it should so happen that they could not return, by contrary streams or otherwise, they shall, in such case, not be permitted to bring such goods to any other place but to these dominions, in order that, under the inspection of the Directors of the place where they may arrive, they may be unladen, an inventory thereof made, and the aforesaid duty of five per cent paid to the Company here, on pain, if they do the contrary, of the forfeiture of their goods so trafficked for, or the real value thereof.

XIV. In case the ships of the Patroons, in going to, or coming from, or sailing on the coast from Florida to Terra Neuf, and no further, without our grant, should overpower any prizes of the enemy, they shall be obliged to bring, or cause to be brought, such prize to the Chamber of the place from whence they sailed out, in order to be rewarded by it; the Company shall keep the one-third part thereof, and the remaining two-thirds shall belong to them, in consideration of the cost and risk they have been at, all according to the orders of the Company.

XV. It shall be also free for the aforesaid Patroons to traffic and trade all along the coast of New Netherland and places circumjacent, with such goods as are consumed there, and receive in return for them all sorts of merchandise that may be had there, except beavers, otters, minks, and all sorts of peltry, which trade the Company reserve to themselves. But the same shall be permitted at such places where the Company have no factories, conditioned that such traders shall be obliged to bring all the peltry they can procure to the Island of Manhattes, in case it may be, at any rate, practicable, and there deliver to the Director, to be by him shipped hither with the ships and goods; or, if they should come here without going there, then to give notice thereof to the Company, that a proper account thereof may be taken, in order that they may pay to the Company one guilder for each merchantable beaver and otter skin; the property, risk and all other charges remaining on account of the Patroons or owners.

XVI. All coarse wares that the Colonists of the Patroons there shall consume, such as pitch, tar, weed-ashes, wood, grain, fish, salt, hearthstone and such like things shall be conveyed in the Company's ships, at the rate of eighteen guilders per last; four thousand weight to be accounted a last, and the Company's ship's crew shall be obliged to wheel and bring the salt on board,

whereof ten lasts make a hundred. And, in case of the want of ships, or room in the ships, they may order it over, at their own cost, in ships of their own, and enjoy in these dominions such liberties and benefits as the Company have granted; but, in either case, they shall be obliged to pay, over and above the duty of five per cent, eighteen guilders for each hundred of salt that is carried over in the Company's ships.

XVII. For all wares which are not mentiond in the foregoing article, and which are not carried by the last, there shall be paid one dollar for each hundred pounds weight; and for wines, brandies, verjuice and vinegar, there shall be paid eighteen guilders per cask.

XVIII. The Company promises the colonists of the Patroons that they shall be free from customs, taxes, excise, imposts or any other contributions for the space of ten years; and after the expiration of the said ten years, at the highest, such customs as the goods pay here for the present.

XIX. They will not take from the service of the Patroons any of their colonists, either man or woman, son or daughter, man-servant or maid-servant; and, though any of these should desire the same, they will not receive them, much less permit them to leave their Patroons, and enter into the service of another, unless on consent obtained from their Patroons in writing, and this for and during so many years as they are bound to their Patroons; after the expiration whereof, it shall be in the power of the Patroons to send hither all such colonists as will not continue in their service, who until then shall not enjoy their liberty. And any colonist who shall leave the service of his Patroon, and enter into the service of another, or shall, contrary to his contract, leave his service, we promise to do everything in our power to apprehend and deliver the same into the hands of his Patroon or attorney, that he may be proceeded against according to the customs of this country, as occasion may require.

XX. From all judgments given by the Courts of the Patroons for upwards of fifty guilders, there may be an appeal to the Company's Commander and Council in New Netherland.

XXI. In regard to such private persons as on their own account, or others in the service of their masters here (not enjoying the same privileges as the Patroons), shall be inclined to go thither and settle, they shall, with the approbation of the Director

and Council there, be at liberty to take up and take possession of as much land as they shall be able properly to improve, and shall enjoy the same in full property either for themselves or masters.

XXII. They shall have free liberty of hunting and fowling, as well by water as by land, generally, and in public and private woods and rivers about their Colonies, according to the orders of the Director and Council.

XXIII. Whosoever, whether colonists of Patroons for their Patroons, or free persons for themselves, or others for their masters, shall discover any shores, bays or other fit places for erecting fisheries, or the making of salt ponds, they may take possession thereof, and begin to work on them as their own absolute property, to the exclusion of all others. And it is consented to that the Patroons of colonists may send ships along the coast of New Netherland, on the cod fishery, and with the fish they catch, trade to Italy or other neutral countries, paying in such cases to the Company a duty of six guilders per last; and if they should come with their lading hither, they shall be at liberty to proceed to Italy, though they shall not, under pretext of this consent, or leave from the Company, carry any goods there, on pain of arbitrary punishment, and it remaining in the breast of the Company to put a supercargo on board each ship, as in the eleventh article.

XXIV. In case any of the colonists should, by his industry and diligence, discover any minerals, precious stones, crystals, marbles or such like, or any pearl fishery, the same shall be and remain the property of the Patroon or Patroons of such Colonie, giving and ordering the discoverer such premium as the Patroon shall beforehand have stipulated with such colonist by contract. And the Patroons shall be exempt from the payment of duty to the Company for the term of eight years, and pay only for freight, to bring them over, two per cent, and after the expiration of the aforesaid eight years, for duty and freight, the one-eighth part of what the same may be worth.

XXV. The Company will take all the colonists, as well free as those that are in service, under their protection, and them defend against all foreign and domestic wars and powers, with the forces they have there, as much as lies in their power.

XXVI. Whosoever shall settle any Colonie out of the limits of the Manhattes Island, shall be obliged to satisfy the Indians

for the land they shall settle upon, and they may extend or enlarge the limits of their Colonies if they settle a proportionate number of colonists thereon.

XXVII. The Patroons and colonists shall in particular, and in the speediest manner, endeavor to find out ways and means whereby they may support a Minister and Schoolmaster, that thus the service of God and zeal for religion may not grow cool and be neglected among them, and they shall, for the first, procure a Comforter of the sick there.

XXVIII. The Colonies that shall happen to lie on the respective rivers or islands (that is to say, each river or island for itself), shall be at liberty to appoint a Deputy, who shall give information to the Commander and Council of that Western quarter, of all things relating to his Colonie, and further matters relating thereto, of which Deputies there shall be one altered or changed in every two years; and all Colonies shall be obliged, at least once in every twelve months, to make exact report of their condition and of the lands thereabout to the Commander and Council there, in order to be transmitted hither.

XXIX. The Colonists shall not be permitted to make any woolen, linen or cotton cloth, nor weave any other stuffs there, on pain of being banished, and as perjurers, to be arbitrarily punished.

XXX. The Company will use their endeavors to supply the colonists with as many Blacks as they conveniently can, on the conditions hereafter to be made, in such manner, however, that they shall not be bound to do it for a longer time than they shall think proper.

XXXI. The Company promise to finish the fort on the Island of the Manhattes, and to put it in a posture of defence without delay.

No. 10. Grant of New Hampshire

November 7/17, 1629

THE New Hampshire patent of 1629 is of the same form and tenor as the patent of 1622 [No. 7], but with restricted boundaries. Only the portion defining the boundaries is here given.

REFERENCES. — *Text* in Hazard's *Historical Collections*, I., 289–293.

[The patent recites the grant of 1620 to the Council for New England, and continues:]

Now this Indenture witnesseth, That the said President and Council . . . do give, grant . . . and confirm unto the said Captain John Mason, his Heires and Assigns, all that Part of the main Land in New-England, lying upon the Sea Coast, beginning from the middle Part of Merrimack River, and from thence to proceed northwards along the Sea Coast to Piscataqua River, and so forwards up within the said River, and to the furthest Head thereof, and from thence northwestwards, until three Score Miles be finished from the first Entrance of Piscataqua River, and also from Merrimack through the said River, and to the furthest Head thereof, and so forwards up into the Lands westwards until three Score Miles be finished; and from thence to cross over Land to the three Score Miles, and accompted from Piscataqua River, together with all Islands and Islets within Five Leagues Distance of the Premisses, and abutting upon the same or any Part or Parcel thereof; . . . which said Portions of Lands with the Appurtenances, the said Captain John Mason, with the Consent of the President and Council, intends to name *New-Hampshire*: . . .

No. 11. Plymouth Patent

January 13/23, 1629/30

It was the original intention of the Separatists in Holland to settle near the Hudson River, within the limits of the Virginia Company; and a patent was accordingly obtained from the Company, June 9/19, 1619. The establishment of the colony at Plymouth, outside the territory of the Virginia Company, made the patent useless; and a grant was next obtained, June 1/11, 1621, from the Council for New England, being the first grant made by the Council. The patent was temporarily superseded by a grant of April 20/30, 1622, in the name and for the benefit of John Pierce; this was later assigned to the Merchant Adventurers of London for £500. The patent of Jan. 13/23, 1629/30, was granted to Bradford and others, through the agency of Allerton. In March, 1640/41, this patent was assigned to the freemen of New Plymouth. Neither of the Plymouth patents was confirmed by the Crown, and the colony never obtained a royal charter. Only so much of the patent of 1629/30 is here given as defines the limits of the grant.

References. — *Text* in Brigham's *Laws of New Plymouth*, 21–26. The patent of 1621, with notes by Deane, is in *Mass. Hist. Coll.*, Fourth Series, II., 156–163. The act of surrender, 1640, is in Hazard's *Historical Collections*, I., 468, 469. For general references, see under No. 5.

[The patent recites the grant of 1620 to the Council for New England, and continues:]

Now knowe yee that the said councell by virtue and authority of his said late Majesty's letters pattents and for and in consideration that William Bradford and his associatts have for these nine yeares lived in New Englande aforesaid and have there inhabited and planted a towne called by the name of New Plimouth att their own proper costs and charges: And now seeinge that by the speciall providence of god, and their extraordinary care and industry they have increased their plantation to neere three hundred people, and are uppon all occasions able to relieve any new planters or others his Majesty's subjects whoe may fall uppon that coaste; . . . doe . . . graunt . . . unto the said William Bradford, his heires, associatts and assignes all that part of New-Englande in America aforesaid and tracte and tractes of lande that lye within or betweene a certaine rivolet or rundlett there commonly called Coahassett alias Conahasset towards the north, and the river commonly called Naragansets river towards the south; and the great westerne ocean towards the east, and betweene and within a straight line directly extendinge upp into the maine land towards the west from the mouth of the said river called Naragansetts river to the utmost limitts and bounds of a cuntry or place in New Englande called Pokenacutt alias Sowamsett westward, and another like straight line extendinge itself directly from the mouth of the said river called Coahassett alias Conahassett towards the west so farr up into the maine lande westwardes as the utmost limitts of the said place or cuntry commonly called Pokencutt alias Sowamsett doe extend, togeather with one half of the said river called Naragansetts and the said rivolett or rundlett called Coahassett alias Conahassett. . . . And for as much as they have noe conveniente place either of tradinge or ffishinge within their own precints whereby (after soe longe travell and great paines,) so hopefull a plantation may subsiste, as alsoe that they may bee incouraged the better to proceed in soe pious a worke which may especially tend to the propagation of religion and the great increase of trade to his Majesty's realmes, and advancemente of the publique plantation, the said councell . . . further . . . graunte . . . unto the said William Bradford . . . all that tracte of lande or parte of New England . . . which lyeth within or betweene and extendeth itself from

the utmost limitts of Cobbiseconte alias Comasee-Conte which adjoineth to the river of Kenebeke alias Kenebekike towards the westerne ocean and a place called the falls at Mequamkike . . . , and the space of fifteene Englishe miles on each side of the said river commonly called Kenebek river, and all the said river called Kenebek that lies within the said limitts and bounds eastward westward northward or southward laste above mentioned. . . .

No. 12. Charter of Maryland

June 20/30, 1632

GEORGE CALVERT, first Lord Baltimore, had been a member of the Virginia Company, and, as one of the two principal secretaries of state, was a member of the Committee of the Council for Plantation Affairs. In 1620 he purchased a tract of land in Newfoundland, for which, under the name of Avalon, he obtained from James I., in 1623, a patent as proprietor. He visited his province in 1627, with the intention of remaining; but the advantages of the region had been exaggerated, and the climate was such as to discourage colonization. In 1629 he went to Virginia, but was obliged to leave on his refusal, as a Catholic, to take the oaths of allegiance and supremacy. Returning to England, he obtained from Charles I. a grant of land north of the Potomac. Baltimore died shortly before the patent passed the seals, and the charter was issued to his son, Cecil, second Lord Baltimore, June 20/30, 1632. The region granted to Baltimore had been included in the Virginia grant of 1609; but the revocation of the third charter in 1624 had left Virginia a royal province, with its unsettled portions subject to allotment at the pleasure of the king. Former members of the Virginia Company protested against the grant; but the protest was ineffectual, and Virginia was directed to befriend the new colony. The charter of Maryland, modelled on that of Avalon, "conferred on the grantee probably the most extensive political privileges ever enjoyed by an English subject, since the great houses had bowed before the successive oppression of Yorkist and Tudor rule" (Doyle).

REFERENCES. — *Text*, Latin and English, in Bacon's *Laws of Maryland.* The early legislation of the colony may be followed in Bacon, and in *Maryland Archives*, I. See also Scharf's *History of Maryland*, I.; Bozman's *History of Maryland*, II.; McMahon's *Hist. View of the Government of Maryland*, I.; Sainsbury's *Calendar of State Papers*, Colonial, I.; Browne's *Georgius and Cecilius Calvert;* Winsor's *Narr. and Crit. Hist.*, III., chap. 13.

CHARLES, by the grace of GOD, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. To ALL to whom these Presents shall come, GREETING.

II. WHEREAS our well beloved and right trusty Subject CÆ-

CILIUS CALVERT, Baron of *BALTIMORE*, in our Kingdom of *Ireland*, Son and Heir of GEORGE CALVERT, Knight, late Baron of BALTIMORE, in our said Kingdom of *Ireland*, treading in the Steps of his Father, being animated with a laudable, and pious Zeal for extending the *Christian Religion*, and also the Territories of our Empire, hath humbly besought Leave of Us, that he may transport, by his own Industry, and Expence, a numerous Colony of the *English* Nation, to a certain Region, herein after described, in a Country hitherto uncultivated, in the Parts of *America*, and partly occupied by Savages, having no Knowledge of the Divine Being, and that all that Region, with some certain Privileges, and Jurisdictions, appertaining unto the wholesome Government, and State of his Colony and Region aforesaid, may by our Royal Highness be given, granted, and confirmed unto him, and his Heirs.

III. KNOW YE therefore, that WE, encouraging with our Royal Favour, the pious and noble Purpose of the aforesaid Barons of *BALTIMORE*, . . . by this our present CHARTER . . . do GIVE, GRANT, and CONFIRM, unto the aforesaid CÆCILIUS, now Baron of *BALTIMORE*, his Heirs, and Assigns, all that Part of the Peninsula, or *Chersonese*, lying in the Parts of *America*, between the Ocean on the East, and the Bay of *Chesopeake* on the West, divided from the Residue thereof by a Right Line drawn from the Promontory, or Head-Land, called *Watkin's Point*, situate upon the Bay aforesaid, near the River of *Wighco*, on the West, unto the Main Ocean on the East; and between that Boundary on the South, unto that Part of the Bay of *Delaware* on the North, which lyeth under the Fortieth Degree of North Latitude from the Æquinoctial, where *New-England* is terminated: And all the Tract of that Land within the Metes underwritten (*that is to say*) passing from the said Bay, called *Delaware Bay*, in a right Line, by the Degree aforesaid, unto the true Meridian of the first Fountain of the River of *Pattowmack*, thence verging towards the South, unto the further Bank of the said River, and following the same on the West and South, unto a certain Place called *Cinquack*, situate near the Mouth of the said River, where it disembogues into the aforesaid Bay of *Chesopeake*, and thence by the shortest Line unto the aforesaid Promontory, or Place, called *Watkin's Point;* so that the whole Tract of Land, divided by the Line aforesaid, between the Main

Ocean, and *Watkin's Point*, unto the Promontory called *Cape-Charles*, and every the Appendages thereof, may entirely remain excepted for ever to US, our Heirs, and Successors.

IV. Also WE do GRANT, and likewise CONFIRM unto the said Baron of *BALTIMORE*, . . . all Islands and Islets within the Limits aforesaid, all and singular the Islands and Islets, from the Eastern Shore of the aforesaid Region, towards the East, which have been, or shall be formed in the Sea, situate within Ten marine Leagues from the said Shore; . . . And furthermore the PATRONAGES, and ADVOWSONS of all Churches which (with the increasing Worship and Religion of CHRIST) within the said Region . . . , hereafter shall happen to be built, together with Licence and Faculty of erecting and founding Churches, Chapels, and Places of Worship, in convenient and suitable Places, within the Premises, and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of *England*, with all, and singular such, and as ample Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and royal Rights, and temporal Franchises whatsoever, as well by Sea as by Land, within the Region . . . aforesaid, to be had, exercised, used, and enjoyed, as any Bishop of *Durham*, within the Bishoprick or County Palatine of *Durham*, in our Kingdom of *England*, ever heretofore hath had, held, used, or enjoyed, or of Right could, or ought to have, hold, use, or enjoy.

V. And WE do by these Presents . . . MAKE, CREATE and CONSTITUTE HIM, the now Baron of *BALTIMORE*, and his Heirs, the TRUE and ABSOLUTE LORDS and PROPRIETARIES of the Region aforesaid, and of all other the Premises (except the before excepted) saving always the Faith and Allegiance and Sovereign Dominion due to US . . . ; TO HOLD of US . . . as of our Castle of *Windsor*, in our County of *Berks*, in free and common SOCCAGE, by Fealty only for all Services, and not *in capite*, nor by Knight's SERVICE, YIELDING therefore unto US . . . two INDIAN ARROWS of those Parts, to be delivered at the said Castle of *Windsor*, every Year, on Tuesday in Easter-Week: And also the fifth Part of all Gold and Silver Ore, which shall happen from Time to Time, to be found within the aforesaid limits.

VI. NOW, That the aforesaid Region, thus by us granted and described, may be eminently distinguished above all other Regions of that Territory, and decorated with more ample Titles,

KNOW YE, that WE . . . have thought fit that the said Region and Islands be erected into a PROVINCE, as out of the plenitude of our royal power and prerogative, WE do . . . ERECT and INCORPORATE the same into a PROVINCE, and nominate the same MARYLAND, by which name WE will that it shall from henceforth be called.

VII. And forasmuch as WE have above made and ordained the aforesaid now Baron of *BALTIMORE*, the true LORD and *Proprietary* of the whole PROVINCE aforesaid, KNOW YE therefore further, that WE . . . do grant unto the said now Baron, (in whose Fidelity, Prudence, Justice, and provident Circumspection of Mind, WE repose the greatest Confidence) and to his Heirs, for the good and happy Government of the said PROVINCE, free, full, and absolute Power, by the tenor of these Presents, to Ordain, Make, and Enact LAWS, of what kind soever, according to their sound Discretions, whether relating to the Public State of the said PROVINCE, or the private Utility of Individuals, of and with the Advice, Assent, and Approbation of the Free-Men of the same PROVINCE, or of the greater Part of them, or of their Delegates or Deputies, whom WE will shall be called together for the framing of LAWS, when, and as often as Need shall require, by the aforesaid now Baron of *BALTIMORE*, and his Heirs, and in the Form which shall seem best to him or them, and the same to publish under the Seal of the aforesaid now Baron of *BALTIMORE*, and his Heirs, and duly to execute the same upon all Persons, for the Time being, within the aforesaid PROVINCE, and the Limits thereof, or under his or their Government and Power, in Sailing towards *MARYLAND*, or thence Returning, Outward-bound, either to *England*, or elsewhere, whether to any other Part of Our, or of any foreign Dominions, wheresoever established, by the Imposition of Fines, Imprisonment, and other Punishment whatsoever ; even if it be necessary, and the Quality of the Offence require it, by Privation of Member, or Life, by him the aforesaid now Baron of *BALTIMORE*, and his Heirs, or by his or their Deputy, Lieutenant, Judges, Justices, Magistrates, Officers, and Ministers, to be constituted and appointed according to the Tenor and true Intent of these Presents, and to constitute and ordain Judges, Justices, Magistrates and Officers, of what Kind, for what Cause, and with what Power soever, within that Land, and the Sea of those Parts, and in such Form as to

the said now Baron of *BALTIMORE*, or his Heirs, shall seem most fitting: And also to Remit, Release, Pardon, and Abolish, all Crimes and Offences whatsoever against such Laws, whether before, or after Judgment passed; and to do all and singular other Things belonging to the Completion of Justice, and to Courts, Prætorian Judicatories, and Tribunals, judicial Forms and Modes of Proceeding, although express Mention thereof in these Presents be not made; and, by Judges by them delegated, to award Process, hold Pleas, and determine in those Courts, Prætorian Judicatories, and Tribunals, in all Actions, Suits, Causes, and Matters whatsoever, as well Criminal as Personal, Real and Mixed, and Prætorian: . . . So NEVERTHELESS, that the Laws aforesaid be consonant to Reason and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the Laws, Statutes, Customs and Rights of this Our Kingdom of *England*.

VIII. AND FORASMUCH as, in the Government of so great a PROVINCE, sudden Accidents may frequently happen, to which it will be necessary to apply a Remedy, before the Freeholders of the said PROVINCE, their Delegates, or Deputies, can be called together for the framing of Laws; neither will it be fit that so great a Number of People should immediately, on such emergent Occasion, be called together, WE THEREFORE, for the better Government of so great a PROVINCE, . . . do grant . . . that the aforesaid now Baron of *BALTIMORE;* and his Heirs, by themselves, or by their Magistrates and Officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesom Ordinances from Time to Time, to be kept and observed within the PROVINCE aforesaid, as well for the Conservation of the Peace, as for the better Government of the People inhabiting therein, and publickly to notify the same to all Persons whom the same in any wise do or may affect . . . : so that the same Ordinances do not, in any Sort, extend to oblige, bind, change, or take away the Right or Interest of any Person or Persons, of, or in Member, Life, Freehold, Goods or Chattels.

* * * * * * * * * * *

XVII. MOREOVER, We will, appoint, and ordain, and by these Presents, for US, our Heirs and Successors, do grant unto the aforesaid now Baron of *BALTIMORE*, his Heirs and Assigns, that the same Baron of *BALTIMORE*, his Heirs and Assigns, from Time to Time, for ever, shall have, and enjoy the Taxes

and Subsidies payable, or arising within the Ports, Harbours, and other Creeks and Places aforesaid, with the PROVINCE aforesaid, for Wares bought and sold, and Things there to be laden, or unladen, to be reasonably assessed by them, and the People there as aforesaid, on emergent Occasion; to whom WE grant Power by these Presents, for US, our Heirs and Successors, to assess and impose the said Taxes and Subsidies there, upon just Cause, and in due Proportion.

XVIII. AND FURTHERMORE . . . , WE . . . do give . . . unto the aforesaid now Baron of *BALTIMORE*, his Heirs and Assigns, full and absolute Licence, Power, and Authority . . . [to] assign, alien, grant, demise, or enfeoff so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient, to have and to hold . . . in Fee-simple, or Fee-tail, or for Term of Life, Lives, or Years; to hold of the aforesaid now Baron of *BALTIMORE*, his Heirs and Assigns, by . . . such . . . Services, Customs and Rents OF THIS KIND, as to the same now Baron of *BALTIMORE*, his Heirs and Assigns, shall seem fit and agreeable, and not immediately of US. . . .

XIX. WE also, . . . do . . . grant Licence to the same Baron of *BALTIMORE*, and to his Heirs, to erect any Parcels of Land within the PROVINCE aforesaid, into Manors, and in every of those Manors, to have and to hold a Court-Baron, and all Things which to a Court-Baron do belong; and to have and to keep View of Frank-Pledge, for the Conservation of the Peace and better Government of those Parts, by themselves and their Stewards, or by the Lords, for the Time being to be deputed, of other of those Manors when they shall be constituted, and in the same to exercise all Things to the View of Frank-Pledge belonging.

* * * * * * * * * * *

XXI. AND FURTHERMORE WE WILL . . . that the said PROVINCE, and the Freeholders or Inhabitants . . . of the said Colony or Country, shall not henceforth be held or reputed a Member or Part of the Land of *Virginia*, or of any other Colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of Government, from which WE do separate both the said PROVINCE, and Inhabitants thereof, and by these Presents do WILL to be distinct, and that they may

be immediately subject to our Crown of *England*, and dependent on the same for ever.

* * * * * * * * * * *

No. 13. Grant of New Hampshire and Massonia

April 22/May 2, 1635

MASON'S grant of 1635, given at the general division made by the Council for New England in that year, was not confirmed by the King. In 1642–1643 the settlements about the Piscataqua were absorbed by Massachusetts, and remained under the jurisdiction of that colony until 1679, when New Hampshire became a royal province. In 1685 the province was again united to Massachusetts. New Hampshire never received a royal charter, but remained a crown province until the Revolution.

REFERENCES. — *Text* in Hazard's *Historical Collections*, I., 384–387. Only the definition of boundaries is given here. On the opinion of the attorney-general, in 1679, relative to the validity of Mason's grants, see Hubbard's *Hist. of New England*, 612–621, in *Mass. Hist. Coll.*, Second Series, VI.

[The patent recites the grant of 1620 to the Council for New England, and continues:]

Now know all men by these presents, that the said Counsell of New England, in America, being assembled in publick court, according to an act made and agreed upon the third day of February last past, before the date of these presents . . . , do for them and their successors, give, grant, . . . and confirm unto Capt. John Mason, Esq; his heyres and assignes, all that part of the Mayn Land of New England aforesaid, beginning from the middle part of Naumkeck River, and from thence to proceed eastwards along the Sea Coast to Cape Anne, and round about the same to Pischataway Harbour, and soe forwards up within the river of Newgewanacke, and to the furthest head of the said River, and from thence northwestwards till sixty miles bee finished, from the first entrance of Pischataqua Harbor, and alsoe from Naumkecke through the River thereof up into the land west sixty miles, from which period to cross over land to the sixty miles end, accompted from Pischataway, through Newgewanacke River to the land northwest aforesaid; and alsoe all that the South Halfe of the Ysles of Sholes, all which lands, with the Consent of the Coun-

sell, shall from henceforth be called New-hampshyre: And alsoe ten thousand acres more of land in New England aforesaid, on the southeast part of Sagadihoc, at the mouth or entrance thereof, from henceforth to bee called by the name of Massonia; togeather with all and singular Havens, Harbors, Cricks, and Yslands inbayed, and all Islands and Isletts lying within five leagues distance of the Mayne Land opposite and abbutting upon the Premises or any part thereof, not formerly lawfully granted to any by spetiall name; . . .

No. 14. Fundamental Orders of Connecticut

January 14/24, 1638/9

THE region of the Connecticut valley, originally included within the grant of 1620 to the Council for New England, became the subject of rival claims on the part of New Netherland, Massachusetts, and Plymouth. A patent for the territory west of the Narragansett River, given in March, 1631/2, by the Earl of Warwick, president of the Council for New England, to Lord Say and Sele, Lord Brook, and others, remained unused until 1635, when John Winthrop, the younger, arrived with a commission as governor, and built a fort at Saybrook, at the mouth of the Connecticut. The Dutch had already built a fort at Hartford, and in 1633 traders from Plymouth had established a post at Windsor. In the meantime, Massachusetts traders had explored the overland route from that colony, and their favorable reports encouraged the plan, already under consideration by inhabitants of Dorchester, Watertown, and Newtown (Cambridge), to remove to a region where greater religious and political freedom, as well as opportunity for material betterment, could be enjoyed. The plan of emigration, defeated in 1634, was approved by Massachusetts the next year, and a commission of government was granted by the General Court. In 1635–1636, settlements were planted at Windsor, Wethersfield, and Hartford. In 1637 the three towns assumed the control of their own affairs, and in January, 1638/9, drew up the constitution known as the Fundamental Orders of Connecticut — "the first written constitution known to history that created a government."

REFERENCES. — *Text* in *Connecticut Colonial Records*, I., 20–25. Warwick's patent of 1631, and Winthrop's commission, are in Trumbull's *History of Connecticut* (ed. 1797), I., 525–528. See also Andrews's *River Towns of Connecticut*, in Johns Hopkins Univ. *Studies*, VII., Nos. 7–9; Trumbull's *Connecticut*, I., chaps. 4, 6; Doyle's *Puritan Colonies*, I., chap. 5; Johnston's *History of Connecticut*.

Forasmuch as it hath pleased the Allmighty God by the wise disposition of his divyne providence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Harte-

ford and Wethersfield are now cohabiting and dwelling in and uppon the River of Conectecotte and the Lands thereunto adjoyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and union of such a people there should be an orderly and decent Goverment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conjoyne our selves to be as one Publike State or Commonwelth; and doe, for our selves and our Successors and such as shall be adjoyned to us att any tyme hereafter, enter into Combination and Confederation togather, to mayntayne and preśearve the liberty and purity of the gospell of our Lord Jesus which we now professe, as also the disciplyne of the Churches, which according to the truth of the said gospell is now practised amongst us; As also in our Civell Affaires to be guided and governed according to such Lawes, Rules, Orders and decrees as shall be made, ordered & decreed, as followeth: —

1. It is Ordered, sentenced and decreed, that there shall be yerely two generall Assemblies or Courts, the on [*one*] the second thursday in Aprill, the other the second thursday in September, following; the first shall be called the Courte of Election, wherein shall be yerely Chosen from tyme to tyme soe many Magestrats and other publike Officers as shall be found requisitte: Whereof one to be chosen Governour for the yeare ensueing and untill another be chosen, and noe other Magestrate to be chosen for more than one yeare; provided allwayes there be sixe chosen besids the Governour; which being chosen and sworne according to an Oath recorded for that purpose shall have power to administer justice according to the Lawes here established, and for want thereof according to the rule of the word of God; which choise shall be made by all that are admitted freemen and have taken the Oath of Fidellity, and doe cohabitte within this Jurisdiction, (having beene admitted Inhabitants by the major part of the Towne wherein they live,) or the mayor parte of such as shall be then present.

2. It is Ordered, sentensed and decreed, that the Election of the aforesaid Magestrats shall be on this manner: every person present and quallified for choyse shall bring in (to the persons deputed to receave them) one single paper with the name of him written in yt whom he desires to have Governour, and he that

hath the greatest number of papers shall be Governor for that yeare. And the rest of the Magestrats or publike Officers to be chosen in this manner: The Secretary for the tyme being shall first read the names of all that are to be put to choise and then shall severally nominate them distinctly, and every one that would have the person nominated to be chosen shall bring in one single paper written uppon, and he that would not have him chosen shall bring in a blanke: and every one that hath more written papers then blanks shall be a Magistrat for that yeare; which papers shall be receaved and told by one or more that shall be then chosen by the court and sworne to be faythfull therein; but in case there should not be sixe chosen as aforesaid, besids the Governor, out of those which are nominated, then he or they which have the most written papers shall be a Magestrate or Magestrats for the ensueing yeare, to make up the foresaid number.

3. It is Ordered, sentenced and decreed, that the Secretary shall not nominate any person, nor shall any person be chosen newly into the Magestracy which was not propownded in some Generall Courte before, to be nominated the next Election; and to that end yt shall be lawfull for ech of the Townes aforesaid by their deputyes to nominate any two whom they conceave fitte to be put to Election; and the Courte may ad so many more as they judge requisitt.

4. It is Ordered, sentenced and decreed that noe person be chosen Governor above once in two yeares, and that the Governor be alwayes a member of some approved congregation, and formerly of the Magestracy within this Jurisdiction; and all the Magestrats Freemen of this Commonwelth: and that no Magestrate or other publike officer shall execute any parte of his or their Office before they are severally sworne, which shall be done in the face of the Courte if they be present, and in case of absence by some deputed for that purpose.

5. It is Ordered, sentenced and decreed, that to the aforesaid Courte of Election the severall Townes shall send their deputyes, and when the Elections are ended they may proceed in any publike searvice as at other Courts. Also the other Generall Courte in September shall be for makeing of lawes, and any other publike occation, which conserns the good of the Commonwelth.

6. It is Ordered, sentenced and decreed, that the Governor

shall, ether by himselfe or by the secretary, send out summons to the Constables of every Towne for the cauleing of these two standing Courts, on [*one*] month at lest before their severall tymes: And also if the Governor and the gretest parte of the Magestrats see cause uppon any spetiall occation to call a generall Courte, they may give order to the secretary soe to doe within fowerteene dayes warneing; and if urgent necessity so require, uppon a shorter notice, giveing sufficient grownds for yt to the deputyes when they meete, or els be questioned for the same; And if the Governor and Mayor [*Major*] parte of Magestrats shall ether neglect or refuse to call the two Generall standing Courts or ether of them, as also at other tymes when the occations of the Commonwelth require, the Freemen thereof, or the Mayor parte of them, shall petition to them soe to doe: if then yt be ether denyed or neglected the said Freemen or the Mayor parte of them shall have power to give order to the Constables of the severall Townes to doe the same, and so may meete togather, and chuse to themselves a Moderator, and may proceed to do any Acte of power, which any other Generall Courte may.

7. It is Ordered, sentenced and decreed that after there are warrants given out for any of the said Generall Courts, the Constable or Constables of ech Towne shall forthwith give notice distinctly to the inhabitants of the same, in some Publike Assembly or by goeing or sending from howse to howse, that at a place and tyme by him or them lymited and sett, they meet and assemble them selves togather to elect and chuse certen deputyes to be att the Generall Courte then following to agitate the afayres of the commonwelth; which said Deputyes shall be chosen by all that are admitted Inhabitants in the severall Townes and have taken the oath of fidellity; provided that non be chosen a Deputy for any Generall Courte which is not a Freeman of this Commonwelth.

The foresaid deputyes shall be chosen in manner following: every person that is present and quallified as before expressed, shall bring the names of such, written in severall papers. as they desire to have chosen for that Imployment, and these 3 or 4, more or lesse, being the number agreed on to be chosen for that tyme, that have greatest number of papers written for them shall be deputyes for that Courte; whose names shall be endorsed on the backe side of the warrant and returned into the Courte, with the Constable or Constables hand unto the same.

8. It is Ordered, sentenced and decreed, that Wyndsor, Hartford and Wethersfield shall have power, ech Towne, to send fower of their freemen as their deputyes to every Generall Courte; and whatsoever other Townes shall be hereafter added to this Jurisdiction, they shall send so many deputyes as the Courte shall judge meete, a resonable proportion to the number of Freemen that are in the said Townes being to be attended therein; which deputyes shall have the power of the whole Towne to give their voats and alowance to all such lawes and orders as may be for the publike good, and unto which the said Townes are to be bownd.

9. It is ordered and decreed, that the deputyes thus chosen shall have power and liberty to appoynt a tyme and a place of meeting togather before any Generall Courte to advise and consult of all such things as may concerne the good of the publike, as also to examine their owne Elections, whether according to the order, and if they or the gretest parte of them find any election to be illegall they may seclud such for present from their meeting, and returne the same and their resons to the Courte; and if yt prove true, the Courte may fyne the party or partyes so intruding and the Towne, if they see cause, and give out a warrant to goe to a newe election in a legall way, either in parte or in whole. Also the said deputyes shall have power to fyne any that shall be disorderly at their meetings, or for not comming in due tyme or place according to appoyntment; and they may returne the said fynes into the Courte if yt be refused to be paid, and the Tresurer to take notice of yt, and to estreete or levy the same as he doth other fynes.

10. It is Ordered, sentenced and decreed, that every Generall Courte, except such as through neglecte of the Governor and the greatest parte of Magestrats the Freemen themselves doe call, shall consist of the Governor, or some one chosen to moderate the Court, and 4 other Magestrats at lest, with the mayor parte of the deputyes of the severall Townes legally chosen; and in case the Freemen or mayor parte of them, through neglect or refusall of the Governor and mayor parte of the magestrats, shall call a Courte, it shall consist of the mayor parte of Freemen that are present or their deputyes, with a Moderator chosen by them: In which said Generall Courts shall consist the supreme power of the Commonwelth, and they only shall have power to make lawes or repeale them, to graunt levyes, to admitt of Freemen, dispose of

lands undisposed of, to severall Townes or persons, and also shall have power to call ether Courte or Magestrate or any other person whatsoever into question for any misdemeanour, and may for just causes displace or deale otherwise according to the nature of the offence; and also may deale in any other matter that concerns the good of this commonwelth, excepte election of Magestrats, which shall be done by the whole boddy of Freemen.

In which Courte the Governour or Moderator shall have power to order the Courte to give liberty of spech, and silence unceasonable and disorderly speakeings, to put all things to voate, and in case the vote be equall to have the casting voice. But non of these Courts shall be adjorned or dissolved without the consent of the major parte of the Court.

11. It is ordered, sentenced and decreed, that when any Generall Courte uppon the occations of the Commonwelth have agreed uppon any summe or sommes of mony to be levyed uppon the severall Townes within this Jurisdiction, that a Committee be chosen to sett out and appoynt what shall be the proportion of every Towne to pay of the said levy, provided the Committees be made up of an equall number out of each Towne.

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No. 15. Grant of the Province of Maine

April 3/13, 1639

VARIOUS grants by the Council for New England, prior to the general division of 1634/5, had included the whole region from the Piscataqua to the Penobscot, while both sides of the Kennebec were also claimed by Plymouth under the patent of 1629/30 (No. 11). The portion which fell to Gorges in the general division received the name of New Somersetshire; and this, with enlarged boundaries, was confirmed by the royal charter of 1639. There were already a number of settlements along the coast. Conflicting claims under other grants led to frequent and vexatious disputes, which Gorges, as an active royalist in England, was in no position to deal with successfully. In 1649, some two years after the death of Gorges, the settlements between Cape Porpoise and the Piscataqua established a government of their own, and so continued until 1652–1653, when they united with Massachusetts; by 1658 the remaining eastern settlements were also absorbed. After the Restoration, the Gorges claim was revived by Ferdinando Gorges, grandson of the former proprietor; and in 1665 the royal commissioners set up a provisional government, and forbade Massachusetts to exercise jurisdiction over the province;

but three years later, the provisional government having ceased to be of importance, the authority of Massachusetts was again quietly asserted. In 1675/6 representatives of Massachusetts were summoned to England to answer complaints. The decision confirmed Gorges's title, and excluded Maine from the jurisdiction of Massachusetts; but in March, 1677/8, the latter colony purchased the Gorges title for £1,250, and thenceforward governed Maine as lord proprietor.

The charter of Maine, like that of Maryland, erected the colony into a palatinate, with Gorges as lord paramount; but the condition of the province prevented effectual use of the extensive powers granted. Only so much of the charter is here given as defines the boundaries of the province.

REFERENCES. — *Text* in Poore's *Federal and State Constitutions*, I., 774–783. For the life and papers of Gorges, see Baxter's *Sir Ferdinando Gorges and his Province of Maine* (Prince Soc. Publ.); the *Brief Relation* is in *ib.*, I. The ordinances of 1639, for the government of the province, are also in Sullivan's *History of Maine*, 413–421.

Whereas Sir Ferdinando Gorges Knight hath been an humble suitor unto us to graunte and confirme unto him and his heires a parte and porcon of the Countrie of America now commonly called or knowne by the name of New England in America hereafter in theise Presents described by the meets and boundes thereof . . . which parte or porcon of the said Countrie wee have heretofore . . . taken into actuall and reall possession or in defaulte of such actuall and reall possession formerly taken Wee Doe by theise Presents . . . take the same into our . . . possession Knowe yee therefore that . . . Wee . . . by these Presents . . . Doe give graunte and confirme unto the said Sir Fardinando Gorges his heires and assignes All that Parte . . . of the Mayne Lande of New England aforesaid beginning att the entrance of Pascataway Harbor and soe to passe upp the same into the River of Newichewanocke and through the same unto the furthest heade thereof and from thence Northwestwards till one hundred and twenty miles bee finished and from Pascataway Harbor mouth aforesaid Northeastwards along the Sea Coasts to Sagadahocke and upp the River thereof to Kynybequy River and through the same unto the heade thereof and into the Lande Northwestwards untill one hundred and twenty myles bee ended being accompted from the mouth of Sagadahocke and from the period of one hundred and twenty myles aforesaid to crosse over Lande to the one hundred and twenty myles end formerly reckoned upp into the Lande from Pascataway Harbor through Newichewanocke River and alsoe the Northe halfe of the Isles of Shoales togeather with

the Isles of Capawock and Nawtican neere Cape Cod as alsoe all the Islands and Ileths lyeinge within five leagues of the Mayne all alonge the aforesaide Coasts betweene the aforesaid River of Pascataway and Segadahocke. . . . All which said Part . . . of the Mayne Lande and all and every the Premisses herein before named Wee Doe . . . create and incorporate into One Province or Countie . . . [to] . . . be called and named the Province or Countie of Mayne. . . .

No. 16. Fundamental Articles of New Haven

June 4/14, 1639

A SETTLEMENT at New Haven was made in April, 1638, by a party of emigrants under the lead of John Davenport, a prominent nonconformist minister of London, and Theophilus Eaton, a wealthy London merchant and former deputy governor of the East India Company. Most of the party had arrived at Boston in the summer of 1637, and were offered strong inducements to remain in Massachusetts; but the religious condition of that colony, just emerging from the Hutchinsonian controversy, and a desire to found an independent state on a scriptural model, determined them to remove to Connecticut. For a year they lived under a "plantation covenant," apparently an ecclesiastical as well as corporate agreement, in the meantime acquiring title to the land by deeds from the Indians. The Fundamental Articles were agreed upon June 4/14, 1639; in October the first general court was held, and the government established, with Eaton as governor.

REFERENCES. — *Text* in *New Haven Colonial Records* (1638–1649), pp. 11–17. On the early history of New Haven, see Trumbull's *Connecticut* (ed. 1797), chap. 6; Levermore's *Republic of New Haven*, chap. 1; Johnston's *Connecticut*, chap. 7; Bacon's *Civil Government in the New Haven Colony*, in New Haven Hist. Soc. *Papers*, I., 11–27; Dexter's *Life and Writings of John Davenport*, *ib.*, II., 205–238; Bacon's *Historical Discourses;* Doyle's *Puritan Colonies*, I., 254–267.

The 4th day of the 4th moneth called June 1639, all the free planters assembled together in a ge[neral*] meetinge to consult about settling civill Government according to God, and about the nomination of persons thatt might be founde by consent of all fittest in all respects for the foundation worke of a church w[hich] was intend to be gathered in Quinipieck. After solemne invocation of the name of God in prayer [for] the presence and help of his speritt, and grace in those weighty businesses, they

* Words and letters in brackets are obliterated or illegible in the original.

were reminded of t[he] busines whereabout they mett [viz] for the establishment of such civill order as might be most p[leas]ing unto God, and for the chuseing the fittest men for the foundation worke of a church to be gather[ed.] For the better inableing them to discerne the minde of God and to agree accordingly concerning the establishment of civill order, Mr. John Davenport propounded divers quæres to them publiquely praying them to consider seriously in the presence and feare of God the weight of the busines they met about, and nott to be rash or sleight in giveing their votes to things they understoode nott, butt to digest fully and throughly whatt should be propounded to them, and without respect to men as they should be satisfied and perswaded in their owne mindes to give their answers in such sort as they would be willing they should stand upon recorde for posterity.

This being earnestly pressed by Mr. Davenport, Mr. Robt. Newman was intreated to write in carracters and to read distinctly and audibly in the hearing of all the people whatt was propounded and accorded on that itt might appeare thatt all consented to matters propounded according to words written by him.

Quær. 1. Whether the Scripturs doe holde forth a perfect rule for the direction and government of all men in all duet[ies] which they are to performe to God and men as well in the government of famylyes and commonwealths as in matters of the chur.

This was assented unto by all, no man dissenting as was expressed by holding up of hands. Afterward itt was read over to them thatt they might see in whatt words their vote was expressed: They againe expressed their consent thereto by holdeing up their hands, no man dissenting.

Quær. 2. Whereas there was a covenant solemnly made by the whole assembly of free-planters of this plantation the first day of extraordenary humiliation which wee had after wee came together, thatt as in matters thatt concerne the gathering and ordering of a chur. so likewise in all publique offices which concerne civill order, as choyce of magistrates and officers, makeing and repealing of lawes, devideing allottments of inheritance and all things of like nature we would all of us be ordered by those rules which the scripture holds forth to us. This covenant was called a plantation covenant to distinguish itt from [a] chur. covenant which could nott att thatt time be made, a chur. nott being then gathered, butt was deferred till a chur. might be gathered according

to God: Itt was demaunded whether all the free planters doe holde themselves bound by thatt covenant in all businesses of thatt nature which are expressed in the covenant to submitt themselves to be ordered by the rules held forth in the scripture.

This also was assented unto by all, and no man gainesaid itt, and they did testefie the same by holde[ing] up their hands both when itt was first propounded, and confirmed the same by holdeing up their hands when itt was read unto them in publique. . . .

Quær. 3. Those who have desired to be received as free planters, and are settled in the plantation with a purp[ose,] resolution and desire thatt they may be admitted into chur. fellowship according to Christ as soone [as] God shall fitt them thereunto: were desired to express itt by holdeing up of hands: Accordingly a[ll] did expresse this to be their desire and purpose by holdeing up their hands twice, [viz] both att the [pro]posall of itt, and after when these written words were read unto them.

Quær. 4. All the free planters were called upon to expresse whether they held themselves bound to esta[blish] such civill order as might best conduce to the secureing of the purity and peace of the ordina[nces] to themselves and their posterity according to God. In answer hereunto they expressed by hold[ing] up their hands twice as before, thatt they held them selves bound to establish such [civil order] as might best conduce to the ends aforesaid.

Then Mr. Davenport declared unto them by the scripture whatt kinde of persons might best be trusted with matters of government, and by sundry arguments from scripture proved that such men as were discrib[ed] in Exod. 18. 2. Deut. 1. 13, with Deut. 17. 15, and 1. Cor. 6: 1 to 7, ought to be intrusted by them, seeing [they] were free to cast themselves into thatt mould and forme of common wealth which appeareth best for them in referrence to the secureing of the pure and peaceable injoyment of all Christ his ordinances [in] the church according to God, whereunto they have bound themselves as hath beene acknowledged. Having thus said he satt downe, praying the company freely to consider whether they would have [it] voted att this time or nott: After some space of silence Mr. Theophilus Eaton answered itt mi[ght] be voted, and some others allso spake to the same purpose, none att all opposeing itt. Then itt was propounded to vote.

Quær. 5. Whether Free Burgesses shalbe chosen out of chur. members they thatt are in the foundat[ion] worke of the church being actually free burgesses, and to chuse to themselves out of the li[ke] estate of church fellowship and the power of chuseing magistrates and officers from among themselves and the power off makeing and repealing lawes according to the worde, and the devideing of inheritances and decideing of differences thatt may arise, and all the buisnesses of like nature are to be transacted by those free burgesses.

This was putt to vote and agreed unto by the lifting up of hands twice as in the former itt was done. Then one man stood up after the vote was past, and expressing his dissenting from the rest in part yett grantinge 1. That magistrates should be men fearing God. 2. Thatt the church is the company whence ordenaryly such men may be expected. 3. Thatt they that chuse them ought to be men fearing God: onely att this he stuck, That free planters ought nott to give this power out of their hands: Another stood up and answered that in this case nothing was done but with their consent. The former answered thatt all the free planters ought to resume this power into their owne hands againe if things were not orderly carryed. Mr. Theophilus Eaton answered thatt in all places they chuse committyes, in like manner the companyes of London chuse the liveryes by whom the publique magistrates are chosen. In this the rest are not wronged because they expect in time to be of the livery themselves, and to have the same power. Some others intreated the former to give his arguments and reasons whereupon he dissented. He refused to doe itt and said they might nott rationally demaund itt, seeing he lett the vote passe on freely and did nott speake till after itt was past, because he would nott hinder whatt they agreed upon. Then Mr. Davenport, after a short relation of some former passages betweene them two about this quest. prayed the company thatt nothing might be concluded by them in this weighty quest. butt whatt themselves were perswaded to be agreeing with the minde of God and they had heard whatt had beene said since the voteing, intreated them againe to consider of itt, and put itt againe to vote as before. — Againe all of them by holding up their hands did shew their consent as before, And some of them professed thatt whereas they did waver before they came to the assembly they were now fully convinced thatt itt is

the minde of God. One of them said that in the morning, before he came, reading Deut. 17. 15. he was convinced att home, another said thatt he came doubting to the assembly butt he blessed God by whatt had beene saide he was now fully satisfied thatt the choyce of burgesses out of chur. members, and to intrust those with the power before spoken off is according to the minde of God revealed in the scriptures. All haveing spoken their apprehensions, itt was agreed upon, and Mr. Robert Newman was desired to write itt as an order whereunto every one thatt hereafter should be admitted here as planters should submitt and testefie the same by subscribeing their names to the order, namely, that church members onely shall be free burgesses, and thatt they onely shall chuse magistrates & officers among themselves to have the power of transacting all the publique civill affayres of this Plantation, of makeing and repealing lawes, devideing of inheritances, decideing of differences thatt may arise and doeing all things or businesses of like nature.

This being thus settled as a foundamentall agreement concerning civill government. Mr. Davenport proceeded to propound some things to consideration aboute the gathering of a chur. And to prevent the blemishing of the first beginnings of the chur. worke, Mr. Davenport advised thatt the names of such as were to be admitted might be publiquely propounded, to the end thatt they who were most approved might be chosen, for the towne being cast into severall private meetings wherein they thatt dwelt nearest together gave their accounts one to another of Gods gracious worke upon them, and prayed together and conferred to their mutuall ediffication, sundry of them had knowledg one of another, and in every meeting some one was more approved of all then any other, For this reason, and to prevent scandalls, the whole company was intreated to consider whom they found fittest to nominate for this worke.

Quær. 6. Whether are you all willing and doe agree in this thatt twelve men be chosen thatt their fitnesse for the foundation worke may be tried, however there may be more named yett itt may be in their power who are chosen to reduce them to twelve, and itt be in the power of those twelve to chuse out of themselves seaven that shall be most approved of the major part to begin the church.

This was agreed upon by consent of all as was expressed by

holdeing up of hands, and thatt so many as should be thought fitt for the foundation worke of the church shall be propounded by the plantation, and written downe and passe without exception unlesse they had given publique scandall or offence, yett so as in case of publique scandall or offence, every one should have liberty to propound their exception att thatt time publiquely against any man that should be nominated when all their names should be writt downe, butt if the offence were private, thatt mens names might be tendered, so many as were offended were intreated to deale with the offender privately, and if he gave nott satisfaction, to bring the matter to the twelve thatt they might consider of itt impartially and in the feare of God. The names of the persons nominated and agreed upon were Mr. Theoph. Eaton, Mr. John Davenport, Mr. Robert Newman, Mr. Math. Gilbert, Mr. Richard Malbon, Mr. Nath: Turner, Eze: Chevers, Thomas Fugill, John Ponderson, William Andrewes, and Jer. Dixon. Noe exception was brought against any of those in publique, except one about takeing an excessive rate for meale which he sould to one of Pequanack in his need, which he confessed with griefe and declared thatt haveing beene smitten in heart and troubled in his conscience, he restored such a part of the price back againe with confession of his sin to the party as he thought himselfe bound to doe. And itt being feared thatt the report of the sin was heard farther th[an] the report of his satisfaction, a course was concluded on to make the satisfaction known to as many as heard of the sinn. Itt was also agreed upon att the said meeting thatt if the persons above named did finde themselves straitened in the number of fitt men for the seaven, thatt itt should be free for them to take into tryal of fitnes such other as they should thinke meete, provided thatt itt should be signified to the towne upon the Lords day who they so take in, thatt every man may be satisfied of them according to the course formerly taken.

No. 17. Massachusetts Body of Liberties

December, 1641

In May, 1635, the General Court of Massachusetts appointed a committee to prepare a draft of laws for the colony. The committee was enlarged in May, 1636, but no action appears to have been taken. A draft presented in

the latter year by John Cotton was passed over without action. In March, 1637/8, the freemen of the towns were directed to suggest necessary laws, and transmit the same to the governor, for consideration by the council and others. In November, 1639, a committee was appointed to digest the laws submitted, and lay the draft before the towns for consideration. Finally, in December, 1641, the code submitted by Nathaniel Ward was adopted, with some amendments, by the General Court. According to Winthrop, the long delay was due to a reluctance, on the part of the General Court, to frame laws in advance of actual conditions, and an indisposition to limit the laws of the colony to such as were, in accordance with the requirement of the charter, in harmony with the laws of England.

REFERENCES. — Facsimile *text* in Whitmore's *Bibliographical Sketch of the Laws of the Massachusetts Colony*, 32–60. The detailed history of the code is given by Whitmore; see also Winthrop's *History of New England*, I., *passim;* and Gray's "Remarks on the Early Laws of Massachusetts Bay," in *Mass. Hist. Coll.*, Third Series, VIII. Cotton's code, under the title of "Abstract of the Laws of New England," is in *Mass. Hist. Coll.*, First Series, V., and Force's *Tracts*, III.

A Coppie of the Liberties of the Massachusets Collonie in New England

The free fruition of such liberties Immunities and priveledges as humanitie, Civilitie, and Christianitie call for as due to every man in his place and proportion; without impeachment and Infringement hath ever bene and ever will be the tranquillitie and Stabilitie of Churches and Commonwealths. And the deniall or deprivall thereof, the disturbance if not the ruine of both.

We hould it therefore our dutie and safetie whilst we are about the further establishing of this Government to collect and expresse all such freedomes as for present we foresee may concerne us, and our posteritie after us, And to ratify them with our sollemne consent.

Wee doe therefore this day religiously and unanimously decree and confirme these following Rites, liberties, and priveledges concerneing our Churches, and Civill State to be respectively impartiallie and inviolably enjoyed and observed throughout our Jurisdiction for ever.

1. No mans life shall be taken away, no mans honour or good name shall be stayned, no mans person shall be arested, restrayned, banished, dismembred, nor any wayes punished, no man shall be deprived of his wife or children, no mans goods or estaite shall be taken away from him, nor any way indammaged

under Coulor of law, or Countenance of Authoritie, unlesse it be by vertue or equitie o' some expresse law of the Country warranting the same, established by a generall Court and sufficiently published, or in case of the defect of a law in any partecular case by the word of god. And in Capitall cases, or in cases concerning dismembring or banishment, according to that word to be judged by the Generall Court.

2. Every person within this Jurisdiction, whether Inhabitant or forreiner shall enjoy the same justice and law, that is generall for the plantation, which we constitute and execute one towards another, without partialitie or delay.

3. No man shall be urged to take any oath or subscribe any articles, covenants or remonstrance, of a publique and Civill nature, but such as the Generall Court hath considered, allowed, and required.

4. No man shall be punished for not appearing at or before any Civill Assembly, Court, Councell, Magistrate, or officer, nor for the omission of any office or service, if he shall be necessarily hindred, by any apparent Act or providence of god, which he could neither foresee nor avoid. Provided that this law shall not prejudice any person of his just cost or damage in any civill action.

5. No man shall be compelled to any publique worke or service unlesse the presse be grounded upon some act of the generall Court, and have reasonable allowance therefore.

6. No man shall be pressed in person to any office, worke, warres, or other publique service, that is necessarily and suffitiently exempted by any naturall or personall impediment, as by want of yeares, greatnes of age, defect of minde, fayling of sences, or impotencie of Lymbes.

7. No man shall be compelled to goe out of the limits of this plantation upon any offensive warres which this Commonwealth or any of our freinds or confederats shall volentarily undertake. But onely upon such vindictive and defensive warres in our owne behalfe, or the behalfe of our freinds, and confederats as shall be enterprized by the Counsell and consent of a Court generall, or by Authority derived from the same.

8. No mans Cattell or goods of what kinde soever shall be pressed or taken for any publique use or service, unlesse it be by warrant grounded upon some act of the generall Court, nor without such reasonable prices and hire as the ordinarie rates of the Countrie do afford. And if his Cattle or goods shall perish or suffer damage in such service, the owner shall be suffitiently recompenced

9. No monopolies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time.

10. All our lands and heritages shall be free from all fines and licences upon Alienations, and from all hariotts, wardships, Liveries, Primerseisens, yeare day and wast, Escheates, and forfeitures, upon the deaths of parents, or Ancestors, be they naturall, casuall, or Juditiall.

11. All persons which are of the age of 21 yeares, and of right understanding and meamories, whether excommunicate or condemned shall have full power and libertie to make there wills and testaments, and other lawfull alienations of theire lands and estates.

12. Every man whether Inhabitant or fforreiner, free or not free shall have libertie to come to any publique Court, Councell, or Towne meeting, and either by speech or writeing to move any lawfull, seasonable, and materiall question, or to present any necessary motion, complaint, petition, Bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner.

[13.] No man shall be rated here for any estaite or revenue he hath in England, or in any forreine partes till it be transported hither.

[14.] Any Conveyance or Alienation of land or other estaite what so ever, made by any woman that is married, any childe under age, Ideott, or distracted person, shall be good, if it be passed and ratified by the consent of a generall Court.

15. All Covenous or fraudulent Alienations or Conveyances of lands, tenements, or any hereditaments, shall be of no validitie

to defeate any man from due debts or legacies, or from any just title, clame or possession, of that which is so fraudulently conveyed.

16. Every Inhabitant that is an howse holder shall have free fishing and fowling in any great ponds and Bayes, Coves and Rivers, so farre as the sea ebbes and flowes within the presincts of the towne where they dwell, unlesse the free men of the same Towne or the Generall Court have otherwise appropriated them, provided that this shall not be extended to give leave to any man to come upon others proprietie without there leave.

17. Every man of or within this Jurisdiction shall have free libertie, not with standing any Civill power to remove both himselfe, and his familie at their pleasure out of the same, provided there be no legall impediment to the contrarie.

Rites Rules and Liberties concerning Juditiall proceedings.

18. No mans person shall be restrained or imprisoned by any Authority what so ever, before the law hath sentenced him thereto, If he can put in sufficient securitie, bayle, or mainprise, for his appearance, and good behaviour in the meane time, unlesse it be in Crimes Capitall, and Contempts in open Court, and in such cases where some expresse act of Court doth allow it.

19. If in a generall Court any miscariage shall be amongst the Assistants when they are by themselves that may deserve an Admonition or fine under 20 sh, it shall be examined and sentenced amongst themselves, If amongst the Deputies when they are by themselves, It shall be examined and sentenced amongst themselves, If it be when the whole Court is togeather, it shall be judged by the whole Court, and not severallie as before.

20. If any which are to sit as Judges in any other Court shall demeane themselves offensively in the Court, the rest of the Judges present shall have power to censure him for it, if the cause be of a high nature it shall be presented to and censured at the next superior Court

21. In all cases where the first summons are not served six dayes before the Court, and the cause breifly specified in the warrant, where appearance is to be made by the partie summoned,

it shall be at his libertie whether he will appeare or no, except all cases that are to be handled in Courts suddainly called upon extraordinary occasions, In all cases where there appeares present and urgent cause Any Assistant or officer apointed shal have power to make out Attaichments for the first summons.

22. No man in any suit or action against an other shall falsely pretend great debts or damages to vex his Adversary, if it shall appeare any doth so, The Court shall have power to set a reasonable fine on his head

23. No man shall be adjudged to pay for detaining any Debt from any Crediter above eight pounds in the hundred for one yeare, And not above that rate proportionable for all somes what so ever, neither shall this be a coulour or countenance to allow any usurie amongst us contrarie to the law of god.

24. In all Trespasses or damages done to any man or men, If it can be proved to be done by the meere default of him or them to whome the trespasse is done, It shall be judged no trespasse, nor any damage given for it.

25. No Summons pleading Judgement, or any kinde of proceeding in Court or course of Justice shall be abated, arested, or reversed, upon any kinde of cercumstantiall errors or mistakes, If the person and cause be rightly understood and intended by the Court.

26. Every man that findeth himselfe unfit to plead his owne cause in any Court, shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee, or reward for his paines. This shall not exempt the partie him selfe from Answering such Questions in person as the Court shall thinke meete to demand of him.

27. If any plantife shall give into any Court a declaration of his cause in writeing, The defendant shall also have libertie and time to give in his answer in writeing, And so in all further proceedings betwene partie and partie, So it doth not further hinder the dispach of Justice then the Court shall be willing unto.

28. The plantife in all Actions brought in any Court shall have libertie to withdraw his Action, or to be nonsuited before the

Jurie hath given in their verdict, in which case he shall alwaies pay full cost and chardges to the defendant, and may afterwards renew his suite at an other Court if he please.

29. In all Actions at law it shall be the libertie of the plantife and defendant by mutual consent to choose whether they will be tryed by the Bench or by a Jurie, unlesse it be where the law upon just reason hath otherwise determined. The like libertie shall be granted to all persons in Criminall cases.

30. It shall be in the libertie both of plantife and defendant, and likewise every delinquent (to be judged by a Jurie) to challenge any of the Jurors. And if his challenge be found just and reasonable by the Bench, or the rest of the Jurie, as the challenger shall choose it shall be allowed him, and tales de cercumstantibus impaneled in their room.

31. In all cases where evidence is so obscure or defective that the Jurie cannot clearely and safely give a positive verdict, whether it be a grand or petit Jurie, It shall have libertie to give a non Liquit, or a spetiall verdict, in which last, that is in a spetiall verdict, the Judgement of the cause shall be left to the Court, And all Jurors shall have libertie in matters of fact if they cannot finde the maine issue, yet to finde and present in their verdict so much as they can, If the Bench and Jurors shall so differ at any time about their verdict that either of them can not proceed with peace of conscience the case shall be referred to the Generall Court, who shall take the question from both and determine it.

32. Every man shall have libertie to replevy his Cattell or goods impounded, distreined, seised, or extended, unlesse it be upon execution after Judgement, and in paiment of fines. Provided he puts in good securitie to prosecute his replevin, And to satisfie such demands as his Adversary shall recover against him in Law.

33. No mans person shall be Arrested, or imprisoned upon execution or judgment for any debt or fine, If the law can finde competent meanes of satisfaction otherwise from his estaite, And if not his person may be arrested and imprisoned where he shall be kept at his owne charge, not the plantife's till satisfaction be made: unlesse the Court that had cognizance of the cause or some superior Court shall otherwise provide.

34. If any man shall be proved and Judged a commen Barrator vexing others with unjust frequent and endlesse suites, It shall be in the power of Courts both to denie him the benefit of the law, and to punish him for his Barratry.

35. No mans Corne nor hay that is in the feild or upon the Cart, nor his garden stuffe, nor any thing subject to present decay, shall be taken in any distresse, unles he that takes it doth presently bestow it where it may not be imbesled nor suffer spoile or decay, or give securitie to satisfie the worth thereof if it comes to any harme.

36. It shall be in the libertie of every man cast condemned or sentenced in any cause in any Inferior Court, to make their Appeale to the Court of Assistants, provided they tender their appeale and put in securitie to prosecute it before the Court be ended wherein they were condemned, And within six dayes next ensuing put in good securitie before some Assistant to satisfie what his Adversarie shall recover against him; And if the cause be of a Criminall nature, for his good behaviour, and appearance, And everie man shall have libertie to complaine to the Generall Court of any Injustice done him in any Court of Assistants or other

37. In all cases where it appeares to the Court that the plantife hath wilingly and witingly done wronge to the defendant in commenceing and prosecuting any action or complaint against him, They shall have power to impose upon him a proportionable fine to the use of the defendant, or accused person, for his false complaint or clamor.

38. Everie man shall have libertie to Record in the publique Rolles of any Court any Testimony given upon oath in the same Court, or before two Assistants, or any Deede or evidence legally confirmed there to remaine in perpetuam rei memoriam, that is for perpetuall memoriall or evidence upon occasion.

39. In all Actions both reall and personall betweene partie and partie, the Court shall have power to respite execution for a convenient time, when in their prudence they see just cause so to doe.

40. No Conveyance, Deede, or promise what so ever shall be of validitie, If it be gotten by Illegal violence, imprisonment, threatenings, or any kinde of forcible compulsion called Dures.

41. Everie man that is to Answere for any Criminall cause, whether he be in prison or under bayle, his cause shall be heard and determined at the next Court that hath proper Cognizance thereof, And may be done without prejudice of Justice.

42. No man shall be twise sentenced by Civill Justice for one and the same Crime, offence, or Trespasse.

43. No man shall be beaten with above 40 stripes, nor shall any true gentleman, nor any man equall to a gentleman be punished with whipping, unles his crime be very shamefull, and his course of life vitious and profligate.

44. No man condemned to dye shall be put to death within fower dayes next after his condemnation, unles the Court see spetiall cause to the contrary, or in case of martiall law, nor shall the body of any man so put to death be unburied 12 howers, unlesse it be in case of Anatomie.

45. No man shall be forced by Torture to confesse any Crime against himselfe nor any other unlesse it be in some Capitall case where he is first fullie convicted by cleare and suffitient evidence to be guilty, After which if the cause be of that nature, That it is very apparent there be other conspiratours, or confederates with him, Then he may be tortured, yet not with such Tortures as be Barbarous and inhumane.

46. For bodilie punishments we allow amongst us none that are inhumane Barbarous or cruell

47. No man shall be put to death without the testimony of two or three witnesses, or that which is equivalent there unto.

48. Every Inhabitant of the Countrie shall have free libertie to search and veewe any Rooles, Records, or Regesters of any Court or office except the Councell, And to have a transcript or exemplification thereof written examined, and signed by the hand of the officer of the office paying the appointed fees therefore.

49. No free man shall be compelled to serve upon Juries above two Courts in a yeare, except grand Jurie men, who shall hould two Courts together at the least.

50. All Jurors shall be chosen continuallie by the freemen of the Towne where they dwell.

51. All Associates selected at any time to Assist the Assistants in Inferior Courts, shall be nominated by the Townes belonging to that Court, by orderly agreement amonge themselves.

52. Children, Idiots, Distracted persons, and all that are strangers, or new commers to our plantation, shall have such allowances and dispensations in any cause whether Criminall or other as religion and reason require.

53. The age of discretion for passing away of lands or such kinde of herediments, or for giveing of votes, verdicts or Sentence in any Civill Courts or causes, shall be one and twentie yeares.

54. When so ever anything is to be put to vote, any sentence to be pronounced, or any other matter to be proposed, or read in any Court or Assembly, If the president or moderator thereof shall refuse to performe it, the Major parte of the members of that Court or Assembly shall have power to appoint any other meete man of them to do it, And if there be just cause to punish him that should and would not.

55. In all suites or Actions in any Court, The plantife shall have libertie to make all the titles and claims to that he sues for he can. And the Defendant shall have libertie to plead all the pleas he can in answere to them, and the Court shall judge according to the intire evidence of all.

56. If any man shall behave himselfe offensively at any Towne meeting, the rest of the freemen then present, shall have power to sentence him for his offence, So be it the mulct or penaltie exceede not twentie shilings.

57. When so ever any person shall come to any very suddaine untimely and unnaturall death, Some Assistant, or the Constables of that Towne shall forthwith sumon a Jury of twelve free men to inquire of the cause and manner of their death, and shall present a true verdict thereof to some neere Assistant, or the next Court to be helde for that Towne upon their oath.

Liberties more peculiarlie concerning the free men.

58. Civill Authorie hath power and libertie to see the peace, ordinances and Rules of Christ observed in every church according

to his word, so it be done in a Civill and not in an Ecclesiastical way.

59. Civill Authoritie hath power and libertie to deale with any Church member in a way of Civill Justice, notwithstanding any Church relation, office, or interest.

60. No church censure shall degrade or depose any man from any Civill dignitie, office, or Authoritie he shall have in the Commonwealth.

61. No Magestrate, Juror, Officer, or other man shall be bound to informe present or reveale any private crim or offence, wherein there is no perill or danger to this plantation or any member thereof, when any necessarietye of conscience binds him to secresie grounded upon the word of god, unlesse it be in case of testimony lawfully required.

62. Any Shire or Towne shall have libertie to choose their Deputies whom and where they please for the General Court, So be it they be free men, and have taken there oath of fealtie, and Inhabiting in this Jurisdiction.

63. No Governor, Deputie Governor, Assistant, Associate, or grand Jury man at any Court, nor any Deputie for the Generall Court, shall at any time beare his owne chardges at any Court, but their necessary expences shall be defrayed either by the Towne, or Shire on whose service they are, or by the Country in generall.

64. Everie Action betweene partie and partie, and proceedings against delinquents in Criminall causes shall be briefly and destinctly entered in the Rolles of every Court by the Recorder thereof. That such actions be not afterwards brought againe to the vexation of any man.

65. No custome or prescription shall ever prevaile amongst us in any morall cause, our meaneing is maintaine anythinge that can be proved to bee morrallie sinfull by the word of god.

66. The Freemen of everie Towneship shall have power to make such by laws and constitutions as may concerne the wellfare of their Towne, provided they be not of a Criminall, but onely of a prudentiall nature, And that their penalties exceede not 20 sh. for one offence. And that they be not repugnant to the publique

laws and orders of the Countrie. And if any Inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distresse.

67. It is the constant libertie of the freemen of this plantation to choose yearly at the Court of Election out of the freemen all the Generall officers of this Jurisdiction. If they please to dischardge them at the day of Election by way of vote. They may do it without shewing cause. But if at any other generall Court, we hould it due justice, that the reasons thereof be alleadged and proved. By Generall officers we meane, our Governor, Deputie Governor, Assistants, Treasurer, Generall of our warres. And our Admirall at Sea, and such as are or hereafter may be of the like generall nature.

68. It is the libertie of the freemen to choose such deputies for the Generall Court out of themselves, either in their owne Townes or elsewhere as they judge fitest, And because we cannot foresee what varietie and weight of occasions may fall into future consideration, And what counsells we may stand in neede of, we decree. That the Deputies (to attend the Generall Court in the behalfe of the Countrie) shall not any time be stated or inacted, but from Court to Court, or at the most but for one yeare. that the Countrie may have an Annuall libertie to do in that case what is most behoofefull for the best welfaire thereof.

69. No Generall Court shall be desolved or adjourned without the consent of the Major parte thereof.

70. All Freemen called to give any advise, vote, verdict, or sentence in any Court, Counsell, or Civill Assembly, shall have full freedome to doe it according to their true Judgements and Consciences, So it be done orderly and inofensively for the manner.

71. The Governor shall have a casting voice whensoever an Equi vote shall fall out in the Court of Assistants, or generall assembly, So shall the presedent or moderator have in all Civill Courts or Assemblies.

72. The Governor and Deputie Governor Joyntly consenting or any three Assistants concurring in consent shall have power out of Court to reprive a condemned malefactour, till the next

quarter or generall Court. The generall Court onely shall have power to pardon a condemned malefactor.

73. The Generall Court hath libertie and Authoritie to send out any member of this Comanwealth of what qualitie, condition or office whatsoever into forreine parts about any publique message or Negotiation. Provided the partie sent be acquainted with the affaire he goeth about, and be willing to undertake the service.

74. The freemen of every Towne or Towneship, shall have full power to choose yearly or for lesse time out of themselves a convenient number of fitt men to order the planting or prudentiall occasions of that Towne, according to Instructions given them in writeing, Provided nothing be done by them contrary to the publique laws and orders of the Countrie, provided also the number of such select persons be not above nine.

75. It is and shall be the libertie of any member or members of any Court, Councell or Civill Assembly in cases of makeing or executing any order or law, that properlie concerne religion, or any cause capitall, or warres, or Subscription to any publique Articles or Remonstrance, in case they cannot in Judgement and conscience consent to that way the Major vote or suffrage goes, to make their contra Remonstrance or protestation in speech or writeing, and upon request to have their dissent recorded in the Rolles of that Court. So it be done Christianlie and respectively for the manner. And their dissent onely be entered without the reasons thereof, for the avoiding of tediousness.

76. When so ever any Jurie of trialls or Jurours are not cleare in their Judgements or consciences conserneing any cause wherein they are to give their verdict, They shall have libertie in open Court to advise with any man they thinke fitt to resolve or direct them, before they give in their verdict.

77. In all cases wherein any freeman is to give his vote, be it in point of Election, makeing constitutions and orders, or passing sentence in any case of Judicature or the like, if he cannot see reason to give it positively one way or an other, he shall have libertie to be silent, and not pressed to a determined vote.

78. The Generall or publique Treasure or any parte thereof shall never be exspended but by the appointment of a Generall

Court, nor any Shire Treasure, but by the appointment of the freemen thereof, nor any Towne Treasurie but by the freemen of that Towneship.

Liberties of Woemen

79. If any man at his death shall not leave his wife a competent portion of his estaite, upon just complaint made to the Generall Court she shall be relieved.

80. Everie marryed woeman shall be free from bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assalt. If there be any just cause of correction complaint shall be made to Authoritie assembled in some Court, from which onely she shall receive it.

Liberties of Children

81. When parents dye intestate, the Elder sonne shall have a doble portion of his whole estate reall and personall, unlesse the Generall Court upon just cause alleadged shall Judge otherwise.

82. When parents dye intestate, haveing noe heires males of their bodies their Daughters shall inherit as Copartners, unles the Generall Court upon just reason shall judge otherwise.

83. If any parents shall wilfullie and unreasonably deny any childe timely or convenient mariage, or shall exercise any unnaturall severitie towards them, Such children shall have free libertie to complain to Authoritie for redresse.

84. No Orphan dureing their minoritie which was not committed to tuition or service by the parents in their life time, shall afterwards be absolutely disposed of by any kindred, freind, Executor, Towneship, or Church, nor by themselves without the consent of some Court, wherein two Assistants at least shall be present.

Liberties of Servants

85. If any servants shall flee from the Tiranny and crueltie of their masters to the howse of any freeman of the same Towne, they shall be there protected and susteyned till due order be taken for their relife. Provided due notice thereof be speedily

given to their maisters from whom they fled. And the next Assistant or Constable where the partie flying is harboured.

86. No servant shall be put of for above a yeare to any other neither in the life time of their maister nor after their death by their Executors or Administrators unlesse it be by consent of Authoritie assembled in some Court, or two Assistants.

87. If any man smite out the eye or tooth of his man servant, or maid servant, or otherwise mayme or much disfigure him, unlesse it be by meere casualtie, he shall let them goe free from his service. And shall have such further recompense as the Court shall allow him.

88. Servants that have served deligentlie and faithfully to the benefitt of their maisters seaven yeares, shall not be sent away emptie. And if any have bene unfaithfull, negligent or unprofitable in their service, notwithstanding the good usage of their maisters, they shall not be dismissed till they have made satisfaction according to the Judgement of Authoritie.

Liberties of Forreiners and Strangers

89. If any people of other Nations professing the true Christian Religion shall flee to us from the Tiranny or oppression of their persecutors, or from famyne, warres, or the like necessary and compulsarie cause, They shall be entertayned and succoured amongst us, according to that power and prudence god shall give us.

90. If any ships or other vessels, be it freind or enemy, shall suffer shipwrack upon our Coast, there shall be no violence or wrong offered to their persons or goods. But their persons shall be harboured, and relieved, and their goods preserved in safety till Authoritie may be certified thereof, and shall take further order therein.

91. There shall never be any bond slaverie villinage or Captivitie amongst us, unles it be lawfull Captives taken in just warres, and such strangers as willingly selle themselves or are sold to us. And these shall have all the liberties and Christian usages which the law of god established in Israell concerning such persons doeth morally require. This exempts none from servitude who shall be Judged thereto by Authoritie.

Off the Bruite Creature

92. No man shall exercise any Tirranny or Crueltie towards any bruite Creature which are usuallie kept for mans use.

93. If any man shall have occasion to leade or drive Cattel from place to place that is far of, So that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest or refresh them, for a competent time, in any open place that is not Corne, meadow, or inclosed for some peculiar use.

94. *Capitall Laws*

1.

Dut. 13. 6. 10
Dut. 17. 2. 6
Ex. 22. 20

If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death.

2.

Ex. 22. 18.
Lev. 20. 27.
Dut. 18. 10.

If any man or woeman be a witch, (that is hath or consulteth with a familiar spirit,) They shall be put to death.

3.

Lev. 24. 15. 16

If any person shall Blaspheme the name of god, the father, Sonne or Holie ghost, with direct, expresse, presumptuous or high handed blasphemie, or shall curse god in the like manner, he shall be put to death.

4.

Ex. 21. 12.
Numb. 35. 13.
14. 30. 31.

If any person committ any wilfull murther, which is manslaughter, committed upon premeditated mallice, hatred, or Crueltie, not in a mans necessarie and just defence, nor by meere casualtie against his will, he shall be put to death.

5.

Numb. 25. 20. 21.
Lev. 24. 17.

If any person slayeth an other suddainely in his anger or Crueltie of passion, he shall be put to death.

6.

Ex. 21. 14. If any person shall slay an other through guile, either by poysoning or other such divelish practice, he shall be put to death.

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10.

Ex. 21. 16. If any man stealeth a man or mankinde, he shall surely be put to death.

11.

Dut. 19. 16. 18. 19. If any man rise up by false witnes, wittingly and of purpose to take away any man's life, he shall be put to death.

12.

If any man shall conspire and attempt any invasion, insurrection, or publique rebellion against our commonwealth, or shall indeavour to surprize any Towne or Townes, fort or forts therein, or shall treacherously and perfediouslie attempt the alteration and subversion of our frame of politie or Government fundamentallie, he shall be put to death.

95. *A declaration of the Liberties the Lord Jesus hath given to the Churches.*

1. All the people of god within this Jurisdiction who are not in a church way, and be orthodox in Judgement, and not scandalous in life, shall have full libertie to gather themselves into a Church Estaite. Provided they doe it in a Christian way, with due observation of the rules of Christ revealed in his word.

2. Every Church hath full libertie to exercise all the ordinances of god, according to the rules of Scripture.

3. Every Church hath free libertie of Election and ordination of all their officers from time to time, provided they be able, pious and orthodox.

4. Every Church hath free libertie of Admission, Recommendation, Dismission, and Expulsion, or deposall of their officers, and members, upon due cause, with free exercise of the

Discipline and Censures of Christ according to the rules of his word.

5. No Injunctions are to be put upon any Church, Church Officers or member in point of Doctrine, worship or Discipline, whether for substance or cercumstance besides the Institutions of the lord.

6. Every Church of Christ hath freedome to celebrate dayes of fasting and prayer, and of thanksgiveing according to the word of god

7. The Elders of Churches have free libertie to meete monthly, Quarterly, or otherwise, in convenient mumbers and places, for conferences, and consultations about Christian and Church questions and occasions.

8. All Churches have libertie to deale with any of their members in a church way that are in the hand of Justice. So it be not to retard or hinder the course thereof.

9. Every Church hath libertie to deale with any magestrate, Deputie of Court or other officer what soe ever that is a member in a church way in case of apparent and just offence given in their places. so it be done with due observance and respect.

10. Wee allowe private meetings for edification in religion amongst Christians of all sortes of people. So it be without just offence both for number, time, place, and other cercumstances.

11. For the preventing and removeing of errour and offence that may grow and spread in any of the Churches in this Jurisdiction. And for the preserveing of trueith and peace in the several churches within them selves, and for the maintenance and exercise of brotherly communion, amongst all the churches in the Countrie, It is allowed and ratified, by the Authoritie of this Generall Court as a lawfull libertie of the Churches of Christ. That once in every month of the yeare (when the season will beare it) It shall be lawfull for the minesters and Elders, of the Churches neere adjoyneing together, with any other of the breetheren with the consent of the churches to assemble by course in each severall Church one after an other. To the intent after the preaching of the word by such a minister as shall be requested

thereto by the Elders of the church where the Assembly is held, The rest of the day may be spent in publique Christian Conference about the discussing and resolveing of any such doubts and cases of conscience concerning matter of doctrine or worship or government of the church as shall be propounded by any of the Breetheren of that church, with leave also to any other Brother to propound his objections or answeres for further satisfaction according to the word of god. Provided that the whole action be guided and moderated by the Elders of the Church where the Assemblie is helde, or by such others as they shall appoint. And that no thing be concluded and imposed by way of Authoritie from one or more Churches upon an other, but onely by way of Brotherly conference and consultations. That the trueth may be searched out to the satisfying of every man's conscience in the sight of god according to his worde. And because such an Assembly and the worke their of can not be duely attended to if other lectures be held in the same weeke. It is therefore agreed with the consent of the Churches. That in that weeke when such an Assembly is held. All the lectures in all the neighbouring Churches for that weeke shall be forborne. That so the publique service of Christ in this more solemne Assembly may be transacted with greater deligence and attention.

96. How so ever these above specified rites, freedomes, Immunities, Authorities and priveledges, both Civill and Ecclesiasticall are expressed onely under the name and title of Liberties, and not in the exact forme of Laws, or Statutes, yet we do with one consent fullie Authorise, and earnestly intreate all that are and shall be in Authoritie to consider them as laws, and not to faile to inflict condigne and proportionable punishments upon every man impartiallie, that shall infringe or violate any of them.

97. Wee likewise give full power and libertie to any person that shall at any time be denyed or deprived of any of them, to commence and prosecute their suite, Complaint, or action against any man that shall so doe, in any Court that hath proper Cognizance or judicature thereof.

98. Lastly because our dutie and desire is to do nothing suddainlie which fundamentally concerne us, we decree that these rites and liberties, shall be Audably read and deliberately weighed

at every Generall Court that shall be held, within three yeares next insueing, And such of them as shall not be altered or repealed they shall stand so ratified, That no man shall infringe them without due punishment.

And if any Generall Court within these next thre yeares shall faile or forget to reade and consider them as abovesaid. The Governor and Deputie Governor for the time being, and every Assistant present at such Courts shall forfeite 20 sh. a man, and everie Deputie 10 sh. a man for each neglect, which shall be paid out of their proper estate, and not by the Country or the Townes which choose them. And when so ever there shall arise any question in any Court amonge the Assistants and Associates thereof about the explanation of these Rites and liberties, The Generall Court onely shall have power to interprett them.

No. 18. Patent of Providence Plantations

March 14/24, 1643

In 1636 Roger Williams, lately banished from Massachusetts, established himself at Providence. A settlement was made at Portsmouth, under William Coddington, in March, 1637/8, and another at Newport in 1639. Warwick was planted in 1642/3, by Samuel Gorton and others. In 1643 Williams, through the influence of the Earl of Warwick, obtained a patent uniting the settlements at Providence, Portsmouth, and Newport, under the name of Providence Plantations. A government under the patent was not organized until May, 1647, at which time Warwick was admitted. The patent conferred liberal rights of self-government, but made no grant of land.

References. — *Text* in *Rhode Island Colonial Records*, I., 143–146. The laws passed in 1647 are in *ib.*, I., 147–208. See also Arnold's *History of Rhode Island* (ed. 1878), I.; Staples's *Annals of the Town of Providence*; Doyle's *Puritan Colonies*, I., 239–254; and bibliographical notes in Winsor's *Narr. and Crit. Hist.*, III., 376–380.

Whereas by an Ordinance of the Lords and Commons, now assembled in Parliament, bearing Date the Second Day of November, Anno Domino 1643, Robert Earl of Warwick, is constituted, and ordained Governor in Chief, and Lord High Admiral of all those Islands and other Plantations inhabited or planted by, or belonging to any His Majesty the King of England's Subjects, (or which hereafter may be inhabited and planted by, or belong-

ing to them) within the Bounds, and upon the Coasts of America. And whereas the said Lords have thought fit, and thereby ordained, that Philip Earl of Pembroke, Edward Earl of Manchester, William Viscount Say and Seal, Philip Lord Wharton, John Lord Rolle, Members of the House of Peers. Sir Gilbert Gerrard, Baronet, Sir Arthur Haslerig, Baronet, Sir Henry Vane, jun., Knight, Sir Benjamin Rudyard, Knight, John Pim, Oliver Cromwell, Dennis Bond, Miles Corbet, Cornelius Holland, Samuel Vassal, John Rolle, and Wm. Spurtow, Esqrs., Members of the House of Commons, should be Commissioners, to join in Aid and Assistance with the said Earl. And whereas for the better Government and Defence, it is thereby ordained, that the aforesaid Governor and Commissioners, or the greater Number of them, shall have Power, and Authority from Time to Time to nominate, appoint, and constitute all such subordinate Governors, Counsellors, Commanders, Officers, and Agents, as they shall judge to be best affected, and most fit and serviceable for the said Islands and Plantations; and to provide for, order and dispose all Things, which they shall, from Time to Time, find most advantageous for the said Plantations; and for the better Security of the Owners and Inhabitants thereof, to assign, ratify, and confirm, so much of their aforementioned Authority and Power, and in such Manner, and to such Persons as they shall judge to be fit for the better governing and preserving of the said Plantations and Islands, from open Violences and private Disturbances and Distractions. And whereas there is a Tract of Land in the Continent of America aforesaid, called by the Name of the Narraganset-Bay; bordering Northward and Northeast on the Patent of the Massachusetts, East and Southeast on Plymouth Patent, South on the Ocean, and on the West and Northwest by the Indians called Nahigganneucks, alias Narragansets; the whole Tract extending about Twenty-five English Miles unto the Pequot River and Country.

And whereas divers well affected and industrious English Inhabitants, of the Towns of Providence, Portsmouth, and Newport in the tract aforesaid, have adventured to make a nearer neighborhood and Society with the great Body of the Narragansets, which may in Time by the blessing of God upon their Endeavours, lay a sure Foundation of Happiness to all America. And have also purchased, and are purchasing of and amongst the

said Natives, some other Places, which may be convenient both for Plantations, and also for building of Ships, Supply of Pipe Staves and other Merchandize. And whereas the said English, have represented their Desire to the said Earl, and Commissioners, to have their hopeful Beginnings approved and confirmed, by granting unto them a Free Charter of Civil Incorporation and Government; that they may order and govern their Plantation in such a Manner as to maintain Justice and peace, both among themselves, and towards all Men with whom they shall have to do. In due Consideration of the said Premises, the said Robert Earl of Warwick, Governor in Chief, and Lord High Admiral of the said Plantations, and the greater Number of the said Commissioners, whose Names and Seals are here underwritten and subjoined, out of a Desire to encourage the good Beginnings of the said Planters, Do, by the Authority of the aforesaid Ordinance of the Lords and Commons, give, grant, and confirm, to the aforesaid Inhabitants of the Towns of Providence, Portsmouth, and Newport, a free and absolute Charter of Incorporation, to be known by the Name of the Incorporation of Providence Plantations, in the Narraganset-Bay, in New England. — Together with full Power and Authority to rule themselves, and such others as shall hereafter inhabit within any Part of the said Tract of land, by such a Form of Civil Government, as by voluntary consent of all, or the greater Part of them, they shall find most suitable to their Estate and Condition; and, for that End, to make and ordain such Civil Laws and Constitutions, and to inflict such punishments upon Transgressors, and for Execution thereof, so to place, and displace Officers of Justice, as they, or the greatest Part of them, shall by free Consent agree unto. Provided nevertheless, that the said Laws, Constitutions, and Punishments, for the Civil Government of the said Plantations, be conformable to the Laws of England, so far as the Nature and Constitution of the place will admit. And always reserving to the said Earl, and Commissioners, and their Successors, Power and Authority for to dispose the general Government of that, as it stands in Relation to the rest of the Plantations in America as they shall conceive from Time to Time, most conducing to the general Good of the said Plantations, the Honour of his Majesty, and the Service of the State. . . .

No. 19. New England Confederation

May 19/29, 1643

THE first definite suggestion of a confederation of the New England colonies appears to have been made in 1637, when certain magistrates and ministers from Connecticut held a conference on the subject with the Massachusetts authorities at Boston. A notice of this meeting was sent to Plymouth, but too late for that colony to be represented. A counter proposition from Massachusetts, in 1638, failed because of the refusal of Connecticut to allow the decision of a majority of the commissioners, in cases of dispute, to be final. The matter was again urged by Connecticut in 1639, in view of threatening reports from New Netherland; but, although favorably considered by Massachusetts, nothing came of it. Fear of an Indian war led to a joint proposal to Massachusetts, in 1640, from Rhode Island, Connecticut, and New Haven; but Massachusetts refused to treat with Rhode Island. Finally, in 1642, moved by the "sad distractions in England," and the renewed danger of an Indian war, the Massachusetts General Court appointed a committee to treat with the other colonies in regard to union. In May, 1643, the commissioners met at Boston, and agreed upon the articles following; but the representatives of Plymouth not having authority to conclude the negotiations at that time, the ratification of that colony was delayed until the first meeting of the commissioners, Sept. 7/14. Rhode Island was not a member of the confederation, and applications for admission, in 1644 and 1648, were refused, unless the Rhode Island settlements would acknowledge the jurisdiction of either Massachusetts or Plymouth. The importance of the confederation practically ceased after 1662, when New Haven was united with Connecticut; but the commissioners continued to hold occasional meetings until 1684.

REFERENCES. — *Text* in *New Haven Colonial Records*, 1653–1665, pp. 562–566. The records of the commissioners are in *Plymouth Colony Records*, IX., X. Frothingham, *Rise of the Republic*, 63, n. 2, gives a list of the meetings. See also Winthrop's *New England*, *passim*; Hubbard's *History of Massachusetts* (*Mass. Hist. Coll.*, Second Series, VI.), chap. 52; Doyle's *Puritan Colonies*, I., chap. 8.

ARTICLES

OF

CONFEDERATION BETWIXT THE PLANTATIONS UNDER THE GOVERNMENT OF THE *MASSACHUSETTS*, THE PLANTATIONS UNDER THE GOVERNMENT OF *PLIMOUTH*, THE PLANTATIONS UNDER THE GOVERNMENT OF *CONNECTECUT*, AND THE GOVERNMENT OF *NEW HAVEN*, WITH THE PLANTATIONS IN COMBINATION THEREWITH.

Whereas we all came into these parts of *America*, with one and the same end and ayme, namely, to advance the Kingdome

of our Lord Jesus Christ, and to enjoy the liberties of the Gospel, in purity with peace; and whereas in our settling (by a wise providence of God) we are further dispersed upon the Sea-Coasts, and Rivers, then was at first intended, so that we cannot (according to our desire) with convenience communicate in one Government, and Jurisdiction; and whereas we live encompassed with people of severall Nations, and strange languages, which hereafter may proved injurious to us, and our posterity: And forasmuch as the Natives have formerly committed sundry insolencies and outrages upon severall Plantations of the English, and have of late combined against us. And seeing by reason of the sad distractions in *England*, which they have heard of, and by which they know we are hindred both from that humble way of seeking advice, and reaping those comfortable fruits of protection which, at other times, we might well expect; we therefore doe conceive it our bounden duty, without delay, to enter into a present Consotiation amongst our selves, for mutuall help and strength in all our future concernments, that, as in Nation, and Religion, so, in other respects, we be, and continue, One, according to the tenour and true meaning of the ensuing Articles.

I. Wherefore it is fully Agreed and Concluded by and between the parties, or Jurisdictions above named, and they doe joyntly and severally by these presents agree and conclude, That they all be, and henceforth be called by the name of, *The United Colonies of New-England*.

II. The said United Colonies for themselves, and their posterities doe joyntly and severally hereby enter into a firm and perpetuall league of friendship and amity, for offence and defence, mutuall advice and succour, upon all just occasions, both for preserving and propagating the truth, and liberties of the Gospel, and for their own mutuall safety, and wellfare.

III. It is further agreed, That the Plantations which at present are, or hereafter shall be settled within the limits of the *Massachusets*, shall be forever under the Government of the *Massachusets*. And shall have peculiar Jurisdiction amongst themselves, as an intire body; and that *Plimouth*, *Connecticut*, and *New-Haven*, shall each of them, in all respects, have the like peculiar Jurisdiction, and Government within their limits. And in reference to the Plantations which already are setled, or shall hereafter be erected and shall settle within any of their limits

respectively, provided that no other Jurisdiction shall hereafter be taken in, as a distinct head, or Member of this Confederation, nor shall any other either Plantation, or Jurisdiction in present being, and not already in combination, or under the Jurisdiction of any of these Confederates, be received by any of them, nor shall any two of these Confederates, joyne in one Jurisdiction, without consent of the rest, which consent to be Interpreted, as in the sixt ensuing Article is expressed.

IV. It is also by these Confederates agreed, That the charge of all just Wars, whether offensive, or defensive, upon what part or Member of this Confederation soever they fall, shall both in men, provisions, and all other disbursements, be born by all the parts of this Confederation, in different proportions, according to their different abilities, in manner following, namely, That the Commissioners for each Jurisdiction, from time to time, as there shall be occasion, bring a true account and number of all the Males in each Plantation, or any way belonging to, or under their severall Jurisdictions, of what quality, or condition soever they be, from sixteen years old, to threescore, being inhabitants there. And that according to the different numbers, which from time to time shall be found in each Jurisdiction, upon a true, and just account, the service of men, and all charges of the war, be born by the poll: Each Jurisdiction, or Plantation, being left to their own just course, and custome, of rating themselves, and people, according to their different estates, with due respect to their qualities and exemptions among themselves, though the Confederation take no notice of any such priviledge. And that, according to the different charge of each Jurisdiction, and Plantation, the whole advantage of the War (if it please God so to blesse their endeavours) whether it be in Lands, Goods, or persons, shall be proportionably divided among the said Confederates.

V. It is further agreed, That if any of these Jurisdictions, or any Plantation under, or in Combination with them, be invaded by any enemy whomsoever, upon notice, and request of any three Magistrates of that Jurisdiction so invaded. The rest of the Confederates, without any further meeting or expostulation, shall forthwith send ayde to the Confederate in danger, but in different proportion, namely the *Massachusets* one hundred men sufficiently armed, and provided for such a service, and journey. And each of the rest five and forty men, so armed and provided,

or any lesse number, if lesse be required, according to this proportion. But if such a Confederate may be supplyed by their next Confederate, not exceeding the number hereby agreed, they may crave help there, and seek no further for the present. The charge to be born, as in this Article is expressed. And at their return to be victualled, and supplied with powder and shot (if there be need) for their journey by that Jurisdiction which imployed, or sent for them. But none of the Jurisdictions to exceed these numbers, till by a meeting of the Commissioners for this Confederation, a greater ayde appear necessary. And this proportion to continue, till upon knowledge of the numbers in each Jurisdiction, which shall be brought to the next meeting, some other proportion be ordered. But in any such case of sending men for present ayde, whether before or after such order or alteration, it is agreed, That at the meeting of the Commissioners for this Confederation, the cause of such war or invasion, be duly considered, and if it appear, that the fault lay in the party so invaded, that then, that Jurisdiction, or Plantation, make just satisfaction, both to the invaders, whom they have injuried, and bear all the charges of the war themselves, without requiring any allowance from the rest of the Confederates toward the same.

And further, if any Jurisdiction see any danger of an invasion approaching, and there be time for a meeting, That in such case, three Magistrates of that Jurisdicton may summon a meeting, at such convenient place, as themselves shall think meet, to consider, and provide against the threatened danger. Provided, when they are met, they may remove to what place they please, onely while any of these four Confederates, have but three Magistrates in their Jurisdiction, a request or summons, from any two of them, shall be accounted of equall force, with the three mentioned in both the clauses of this Article, till there be an increase of Magistrates there.

VI. It is also agreed, That for the managing and concluding of all affaires proper to, and concerning the whole Confederation, two Commissioners shall be chosen by, and out of the foure Jurisdictions, namely two for the *Massachusets*, two for *Plimouth*, two for *Connecticut*, and two for *New-haven*, being all in Church-fellowship with us, which shall bring full power from their severall generall Courts respectively, to hear, examine, weigh, and deter-

mine all affaires of war, or peace, leagues, aydes, charges, and numbers of men for war, division of spoyles, or whatsoever is gotten by conquest, receiving of more confederates, or Plantations into Combination with any of these Confederates, and all things of like nature, which are the proper concomitants, or consequences of such a Confederation, for amity, offence, and defence, not intermedling with the Government of any of the Jurisdictions, which by the third Article, is preserved intirely to themselves. But if these eight Commissioners when they meet, shall not all agree, yet it is concluded, That any six of the eight agreeing, shall have power to settle, and determine the businesse in question. But if six doe not agree, that then such Propositions, with their Reasons, so far as they have been debated, be sent, and referred to the foure Generall Courts, *viz.* The *Massachusets*, *Plymouth*, *Connectecut*, and New-haven. And if at all the said Generall Courts, the businesse so referred, be concluded, then to be prosecuted by the Confederates, and all their Members. It is further agreed, That these eight Commissioners shall meet once every year, besides extraordinary meetings, according to the fifth Article to consider, treat, and conclude of all affaires belonging to this Confederation, which meeting shall ever be the first *Thursday* in *September*. And that the next meeting after the date of these presents, which shall be accounted the second meeting, shall be at *Boston* in the *Massachusets*, the third at *Hartford*, the fourth at *New-haven*, the fifth at *Plimouth*, the sixth and seventh at *Boston;* and then *Hartford*, *New-haven*, and *Plymouth*, and so in course successively. If in the mean time, some middle place be not found out, and agreed on, which may be comodious for all the Jurisdictions.

VII. It is further agreed, That at each meeting of these eight Commissioners, whether ordinary or extraordinary; they all, or any six of them agreeing as before, may choose their President out of themselves, whose Office and work shall be, to take care, and direct for Order, and a comely carrying on of all proceedings in the present meeting. But he shall be invested with no such power or respect, as by which, he shall hinder the propounding or progresse of any businesse, or any way cast the scales, otherwise then in the precedent Article is agreed.

VIII. It is also agreed, That the Commissioners for this Confederation hereafter at their meetings, whether ordinary or ex-

traordinary, as they may have Commission or opportunity, doe endeavour to frame and establish Agreements and Orders in generall cases of a civil nature, wherein all the Plantations are interested, for preserving peace amongst themselves, and preventing (as much as may be) all occasions of war, or differences with others, as about the free and speedy passage of Justice in each Jurisdiction, to all the Confederates equally, as to their own, receiving those that remove from one Plantation to another, without due Certificates, how all the Jurisdictions may carry it towards the *Indians*, that they neither grow insolent, nor be injuried without due satisfaction, least War break in upon the Confederates, through such miscarriages. It is also agreed, That if any Servant run away from his Master, into any other of these Confederated Jurisdictions, That in such case, upon the Certificate of one Magistrate in the Jurisdiction, out of which the said Servant fled, or upon other due proof, the said Servant shall be delivered either to his Master, or any other that pursues, and brings such Certificate, or proof. And that upon the escape of any Prisoner whatsoever, or fugitive, for any Criminall Cause, whether breaking Prison, or getting from the Officer, or otherwise escaping, upon the Certificate of two Magistrates of the Jurisdiction out of which the escape is made, that he was a prisoner or such an offendor, at the time of the escape. The Magistrates, or some of them, of that Jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a Warrant, as the case will bear, for the apprehending of any such person, and the delivery of him into the hand of the Officer, or other person who pursueth him. And if help be required for the safe returning of any such offender, it shall be granted unto him that craves the same, he paying the charges thereof.

IX. And for that the justest Wars may be of dangerous consequence, especially to the smaller Plantations in these *United Colonies*, it is agreed, That neither the *Massachusets*, *Plymouth*, *Connecticut*, nor *New-Haven*, nor any of the Members of any of them, shall at any time hereafter begin undertake or engage themselves, or this Confederation, or any part thereof in any War whatsoever (sudden exigents with the necessary consequences thereof excepted, which are also to be moderated, as much as the case will permit) without the consent and agreement of the forenamed eight Commissioners, or at least six of them, as in

the sixt Article is provided. And that no charge be required of any of the Confederates in case of a defensive War, till the said Commissioners have met, and approved the Justice of the War, and have agreed upon the sum of money to be levied; which sum is then to be paid by the severall Confederates, in proportion, according to the fourth Article.

X. That in extraordinary occasions, when meetings are summoned by three Magistrates of any Jurisdiction, or two as in the fifth Article, if any of the Commissioners come not, due warning being given, or sent, it is agreed, That foure of the Commissioners shall have power to direct a War which cannot be delayed, and to send for due proportions of men, out of each Jurisdiction, as well as six might doe, if all met, but not lesse than six shall determine the justice of the War, or allow the demands, or Bills of charges, or cause any levies to be made for the same.

XI. It is further agreed, That if any of the Confederates shall hereafter break any of these presents Articles, or be any other way injurious to any one of the other Jurisdictions such breach of Agreement, or injury shalbe duly considered, and ordered by the Commissioners for the other Jurisdictions, that both peace, and this present Confederation, may be intirely preserved without violation.

Lastly, this perpetuall Confederation, and the severall Articles and Agreements thereof, being read and seriously considered, both by the Generall Court for the *Massachusetts*, and by the Commissioners for *Plymouth*, *Connecticut*, and *New-Haven*, were presently and fully allowed and confirmed by three of the forenamed Confederates, namely the *Massachusetts*, *Connecticut*, and *New-Haven;* in testimony whereof, the Generall Court of the *Massachusetts* by their Secretary, and the Commissioners for *Connecticut* and *New-Haven* subscribed them the 19 day of the third month, commonly called *May*, *Anno Domini*, 1643.

Only the Commissioners from *Plymouth*, having brought no Commission to conclude, desired respite to advise with their Generall Court, which was granted, and at the second meeting of the Commissioners for the Confederation, held at *Boston* in *September* following, the Commissioners for the Jurisdiction of *Plymouth*, delivered in an Order of their Generall Court, dated the 29 of *August*, 1643, by which it appeared that these Articles of Confederation were read, approved and confirmed by the said

Court, and all their Townships, and their Commissioners authorized to ratifie them by their subscriptions, which they accordingly did, the 7 day of *September*, 1643.

No. 20. Government of New Haven

October 27/November 6, 1643

INDEPENDENT settlements, similar to New Haven, were established at Guilford and Milford in 1639, and at Stamford and Southold (Long Island) in 1640. In 1643 these settlements united with New Haven in a representative government, under which the colony continued until 1662, when New Haven was incorporated with Connecticut under a royal charter.

REFERENCES. — *Text* in *New Haven Colonial Records*, 1638–1649, pp. 112–116. For general references, see under No. 16, *ante*.

Itt was agreed and concluded as a foundamentall order nott to be disputed or questioned hereafter, thatt none shall be admitted to be free burgesses in any of the plantations within this jurisdiction for the future, butt such planters as are members of some or other of the approved churches in New England, nor shall any butt such free burgesses have any vote in any election, (the six present freemen att Milforde enjoying the liberty with the cautions agreed,*) nor shall any power or trust in the ordering of any civill affayres, be att any time putt into the hands of any other then such church members, though as free planters, all have right to their inherritance & to comerce, according to such grants, orders and lawes as shall be made concerning the same.

2. All such free burgesses shall have power in each towne or plantation within this jurisdiction to chuse fitt and able men, from amongst themselves, being church members as before, to be the ordinary judges, to heare and determine all inferior causes, whether civill or criminall, provided thatt no civill cause to be tryed in any of these plantation Courts in value exceed 20^{l}, and thatt the punishment in such criminalls, according to the minde of God, revealed in his word, touching such offences, doe nott exceed stocking and whipping, or if the fine be pecuniary, thatt itt exceed nott five pounds. In which Court the magistrate or magistrates, if any be chosen by the free burgesses of the jurisdiction for thatt plantation, shall sitt and assist with due respect

* See *New Haven Colonial Records*, 1638–1649, pp. 110, 111.

to their place, and sentence shall pass according to the vote of the major part of each such Court, onely if the partyes, or any of them, be nott satisfyed with the justice of such sentences or executions, appeales or complaints may be made from and against these Courts to the Court of Magistrates for the whole jurisdiction.

3. All such free burgesses through the whole jurisdiction, shall have vote in the election of all magistrates, whether Governor, Deputy Governor, or other magistrates, with a Treasurer, a Secretary and a Marshall, &c. for the jurisdiction. And for the ease of those free burgesses, especially in the more remote plantations, they may by proxi vote in these elections, though absent, their votes being sealed up in the presence of the free burgesses themselves, thatt their severall libertyes may be preserved, and their votes directed according to their owne perticular light, and these free burgesses may, att every election, chuse so many magistrates for each plantation, as the weight of affayres may require, and as they shall finde fitt men for thatt trust. Butt it is provided and agreed, thatt no plantation shall att any election be left destitute of a magistrate if they desire one to be chosen out of those in church fellowshipp with them.

4. All the magistrates for the whole jurisdiction shall meete twice a yeare att Newhaven, namely, the Munday immediately before the sitting of the two fixed Generall Courts hereafter mentioned, to keep a Court called the Court of Magistrates, for the tryall of weighty and capitall cases, whether civill or criminall, above those lymitted to the ordinary judges in the perticular plantations, and to receive and try all appeales brought unto them from the aforesaid Plantation Courts, and to call all the inhabitants, whether free burgesses, free planters or others, to account for the breach of any lawes established, and for other misdemeanours, and to censure them according to the quallity of the offence, in which meetings of magistrates, less then fower shall nott be accounted a Court, nor shall they carry on any busines as a Court, butt itt is expected and required, thatt all the magistrates in this jurisdiction doe constantly attend the publique service att the times before mentioned, & if any of them be absent att one of the clock in the afternoone on Munday aforesaid, when the court shall sitt, or if any of them depart the towne without leave, while the court sitts, he or they shall pay for any such

default, twenty shillings fine, unless some providence of God occasion the same, which the Court of Magistrates shall judge off from time to time, and all sentences in this court shall pass by the vote of the major part of magistrates therein, butt from this Court of Magistrates, appeales and complaints may be made and brought to the Generall Court as the last and highest for this jurisdiction; butt in all appeales or complants from, or to, what court soever, due costs and damages shall be payd by him or them thatt make appeale or complaint without just cause.

5. Besides the Plantation Courts and Court of Magistrates, their shall be a Generall Court for the Jurisdiction, which shall consist of the Governor, Deputy Governor and all the Magistrates within the Jurisdiction, and two Deputyes for every plantation in the Jurisdiction, which Deputyes shall from time to time be chosen against the approach of any such Generall Court, by the aforesaid free burgesses, and sent with due certifficate to assist in the same, all which, both Governor and Deputy Governor, Magistrates and Deputyes, shall have their vote in the said Court. This Generall Court shall alwayes sitt att Newhaven, (unless upon weighty occasions the Generall Court see cause for a time to sitt elsewhere,) and shall assemble twice every yeare, namely, the first Wednesday in Aprill, & the last Wednesday in October, in the later of which Courts, the Governor, the Deputy Governor and all the magistrates for the whole jurisdiction with a Treasurer, a Secretary and Marshall, shall yearely be chosen by all the free burgesses before mentioned, besides which two fixed courts, the Governor, or in his absence, the Deputy Governor, shall have power to summon a Generall Court att any other time, as the urgent and extraordinary occasions of the jurisdiction may require, and att all Generall Courts, whether ordinary or extraordinary, the Governor and Deputy Governor, and all the rest of the magistrates for the jurisdiction, with the Deputyes for the severall plantations, shall sitt together, till the affayres of the jurisdiction be dispatched or may safely be respited, and if any of the said magistrates or Deputyes shall either be absent att the first sitting of the said Generall Court, (unless some providence of God hinder, which the said Court shall judge of,) or depart, or absent themselves disorderly before the Court be finished, he or they shall each of them pay twenty shillings fine, with due considerations of further aggravations if there shall be cause;

which Generall Court shall, with all care and dilligence provide for the maintenance of the purity of religion, and shall suppress the contrary, according to their best light from the worde of God, and all wholsome and sound advice which shall be given by the elders and churches in the jurisdiction, so farr as may concerne their civill power to deale therein.

Seconly, they shall have power to mak and repeale lawes, and, while they are in force, to require execution of them in all the severall plantations.

Thirdly, to impose an oath upon all the magistrates, for the faithfull discharge of the trust comitted to them, according to their best abilityes, and to call them to account for the breach of any lawes established, or for other misdemeanors, and to censure them, as the quallity of the offence shall require.

Fowerthly, to impose and [*an*] oath of fidelity and due subjection to the lawes upon all the free burgesses, free planters, and other inhabitants within the whole jurisdiction.

5ly to settle and leivie rates and contributions upon all the severall plantations, for the publique service of the jurisdiction.

6ly, to heare and determine all causes, whether civill or criminall, which by appeale or complaint shall be orderly brought unto them from any of the other Courts, or from any of the other plantations, In all which, with whatsoever else shall fall within their cognisance or judicature, they shall proceed according to the scriptures, which is the rule of all rightous lawes and sentences, and nothing shall pass as an act of the Generall Court butt by the consent of the major part of magistrates, and the greater part of Deputyes.

* * * * * * * * * * *

No. 21. Maryland Toleration Act

April, 1649

PRACTICAL religious toleration existed in Maryland from the first, although for some years the Jesuits were the only clergy in the colony. The Puritan party, however, increased; and the success of Parliament in its struggle with the king forced Baltimore not only to protect the Catholics, but also to guard against the charge that Maryland was a Catholic colony. To that end, in 1648 he removed the governor, Thomas Greene, a Catholic, and appointed William Stone of Virginia, a Protestant and an adherent of the Parliamentary

cause. With the new commissions for the governor and council, Baltimore also sent drafts of sixteen proposed laws, one of which, apparently, was the Toleration Act. The act was passed by an assembly, the majority of whom were probably Catholics, held at St. Mary's, April 2–21, 1649. A proviso in Stone's commission, forbidding him to assent to the repeal of any law, past or future, concerning religion, was designed to prevent later interference. In 1654, when the Puritans gained control, the protection hitherto accorded to Catholics was withdrawn; but the act of 1649 was revived in 1658, on the restoration of Baltimore's authority, and was incorporated in the revision of the laws made in 1676. An order of 1659, imposing penalties upon Quakers, seems not to have been enforced.

REFERENCES. — *Text* in Browne's *Archives of Maryland*, I., 244–247. On the general subject of toleration in Maryland, see references in Winsor's *Narr. and Crit. Hist.*, III., 560–562.

An Act Concerning Religion

[The first part of the act provides for the punishment of blasphemy and Sabbath-breaking, and of such persons as shall call any one within the Province "an heretick, Scismatick, Idolator, puritan, Independant, Prespiterian popish prest, Jesuite, Jesuited papist, Lutheran, Calvenist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or any other name or terme in a reproachfull manner relating to matter of Religion."]

And whereas the inforceing of the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence in those commonwealthes where it hath been practised, And for the more quiett and peaceable governement of this Province, and the better to preserve mutuall Love and amity amongst the Inhabitants thereof. Be it Therefore . . . enacted (except as in this present Act is before Declared and sett forth) that noe person or persons whatsoever within this Province, or the Islands, Ports, Harbors, Creekes, or havens thereunto belonging professing to beleive in Jesus Christ, shall from henceforth bee any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province or the Islands thereunto belonging nor any way compelled to the beleife or exercise of any other Religion against his or her consent, soe as they be not unfaithfull to the Lord Proprietary, or molest or conspire against the civill Government established or to bee established in this Province under him or his heires. And that all & every person and persons that shall presume Contrary to this Act and the true intent and meaning

thereof directly or indirectly either in person or estate willfully to wrong disturbe trouble or molest any person whatsoever within this Province professing to beleive in Jesus Christ for or in respect of his or her religion or the free exercise thereof within this Province other than is provided for in this Act that such person or persons soe offending, shalbe compelled to pay trebble damages to the party soe wronged or molested, and for every such offence shall also forfeit 20^{s} sterling in money or the value thereof, half thereof for the use of the Lo: Proprietary, and his heires Lords and Proprietaries of this Province, and the other half for the use of the party soe wronged or molested as aforesaid, Or if the partie soe offending as aforesaid shall refuse or bee unable to recompense the party soe wronged, or to satisfy such ffyne or forfeiture, then such Offender shalbe severely punished by publick whipping & imprisonment during the pleasure of the Lord Proprietary, or his Leiuetenant or cheife Governor of this Province for the tyme being without baile or maineprise. . . .

No. 22. Navigation Act

October 9/19, 1651

Under the early colonial charters, the American colonies were generally exempted, either wholly or for a term of years, from the operation of the various acts for the regulation of trade then in force. The activity of the Dutch, however, gradually secured to that nation the virtual control of the colonial carrying trade. To regain this trade for the English, Parliament, in 1645, passed the first of a long series of acts and ordinances commonly spoken of collectively as the Navigation Acts. The ordinance of 1645 prohibited the importation into England, in other than English vessels manned by English seamen, of whale oil and other products of the whale fisheries. An ordinance of the following year restricted the foreign trade of the colonies to English bottoms. In 1649 the importation into England, Ireland, "or any of the dominions thereof," of French wines, wool, and silk was prohibited. In 1650, Virginia and certain of the West India colonies, where opposition to Puritanism had broken out, were declared to be in rebellion; and in order "to hinder the carrying over of any such persons as are enemies to this Commonwealth, or that may prove dangerous to any of the English plantations in America," foreign vessels were forbidden to trade with the colonies, save under license from Parliament or the Council of State. The act of 1651 aimed to secure the colonial trade for the mother country by "a policy of coercion pure and simple."

References. — *Text* in Scobell's *Acts of Parliament* (ed. 1653), 165–170.

The original text is in black letter, except the words here printed in italics; and there is no division into paragraphs. On the history and effects of the Navigation Acts, as touching America, see Beer's *Commercial Policy of England towards the American Colonies*, in Columbia Coll. *Studies*, III., No. 2; Channing's *Navigation Laws*, in Amer. Antiq. Soc. *Proceedings*, 1889; Scott's *Development of Constitutional Liberty*, chap. 8.

An Act for increase of Shipping and Encouragement of the Navigation of this Nation.

For the Increase of the Shipping and the encouragement of the Navigation of this Nation, which under the good Providence and protection of God, is so great a means of the Welfare and Safety of this Commonwealth; Be it Enacted by this present Parliament, and the Authority thereof, That from and after the First day of *December*, One thousand six hundred fifty one, and from thenceforwards, No Goods or Commodities whatsoever, of the Growth, Production or Manufacture of *Asia*, *Africa* or *America*, or of any part thereof; or of any Islands belonging to them or any of them, or which are described or laid down in the usual Maps or Cards of those places, as well of the English Plantations as others, shall be Imported or brought into this Commonwealth of *England*, or into *Ireland*, or any other Lands, Islands, Plantations or Territories to this Commonwealth belonging, or in their Possession, in any other Ship or Ships, Vessel or Vessels whatsoever, but onely in such as do truly and without fraud belong onely to the People of this Commonwealth, or the Plantations thereof, as the Proprietors or right Owners thereof: And whereof the Master and Mariners are also for the most part of them, of the People of this Commonwealth, under the penalty of the forfeiture and loss of all the Goods that shall be Imported contrary to this Act; as also of the Ship (with all her Tackle, Guns and Apparel) in which the said Goods or Commodities shall be so brought in and Imported; The one moiety to the use of the Commonwealth, and the other moiety to the use and behoof of any person or persons who shall seize the said Goods or Commodities, and shall prosecute the same in any Court of Record within this Commonwealth.

And it is further Enacted . . . , That no Goods or Commodities of the Growth, Production or Manufacture of *Europe*, or of any part thereof, shall after the First day of *December*, One thousand six hundred fifty and one, be Imported or brought into this Commonwealth of *England*, or into *Ireland*, or any other Lands,

Islands, Plantations or Territories to this Commonwealth belonging, or in their possession, in any Ship or Ships, Vessel or Vessels whatsover, but in such as do truly and without fraud belong onely to the people of this Commonwealth, as the true Owners and Proprietors thereof, and in no other, except onely such Foreign Ships and Vessels as do truly and properly belong to the people of that Countrey or place, of which the said Goods are the Growth, Production or Manufacture; or to such Ports where the said Goods can onely be, or most usually are first Shipped for Transportation; And that under the same penalty of forfeiture and loss expressed in the former Branch of this Act, the said Forfeitures to be recovered and imployed as is therein expressed.

And it is further Enacted . . . , That no Goods or Commodities that are of Foreign Growth, Production or Manufacture, and which are to be brought into this Commonwealth, in shipping belonging to the people thereof, shall be by them Shipped or brought from any other place or places, Countrey or Countreys, but onely from those of their said Growth, Production or Manufacture; or from those Ports where the said Goods and Commodities can onely, or are, or usually have been first shipped for Transportation; And from none other Places or Countreys, under the same penalty of forfeiture and loss expressed in the first Branch of this Act, the said Forfeitures to be recovered and imployed as is therein expressed.

And it is further Enacted . . . , That no sort of Cod-fish, Ling, Herring, Pilchard, or any other kinde of salted Fish, usually fished for and caught by the people of this Nation; nor any Oyl made, or that shall be made of any kinde of Fish whatsoever; nor any Whale-fins, or Whale-bones, shall from henceforth be Imported into this Commonwealth, or into *Ireland*, or any other Lands, Islands, Plantations or Territories thereto belonging, or in their possession, but onely such as shall be caught in Vessels that do or shall truly and properly belong to the people of this Nation, as Proprietors and Right Owners thereof: And the said Fish to be cured, and the Oyl aforesaid made by the people of this Commonwealth, under the penalty and loss expressed in the said first Branch of this present Act; the said Forfeit to be recovered and imployed as is there expressed.

And it is further Enacted . . . , That no sort of Cod, Ling, Herring, Pilchard, or any other kinde of Salted Fish whatsoever,

which shall be caught and cured by the people of this Commonwealth, shall be from and after the First day of *February*, One thousand six hundred fifty three, Exported from any place or places belonging to this Commonwealth, in any other Ship or Ships, Vessel or Vessels, save onely in such as do truly and properly appertain to the people of this Commonwealth, as Right Owners; and whereof the Master and Mariners are for the most part of them English, under the penalty and loss expressed in the said first Branch of this present Act; the said Forfeit to be recovered and imployed as is there expressed.

Provided always, That this Act, nor anything therein contained, extend not, or be meant to restrain the Importation of any of the Commodities of the Streights or Levant Seas, loaden in the Shipping of this Nation as aforesaid, at the usual Ports or places for lading of them heretofore within the said Streights or Levant Seas, though the said Commodities be not of the very Growth of the said places.

Provided also, That this Act nor any thing therein contained, extend not, nor be meant to restrain the Importing of any *East-India* Commodities loaden in the Shipping of this Nation, at the usual Port or places for lading of them heretofore in any part of those Seas, to the Southward and Eastward of *Cabo Bona Esperanza*, although the said Ports be not the very places of their Growth.

Provided also, That it shall and may be lawful to and for any of the people of this Commonwealth, in Vessels or Ships to them belonging, and whereof the Master and Mariners are of this Nation as aforesaid, To load and bring in from any of the Ports of *Spain* and *Portugal*, all sorts of Goods or Commodities that have come from, or any way belonged unto the Plantations or Dominions of either of them respectively.

Be it also further Enacted . . . , That from henceforth, it shall not be lawful to any person or persons whatsover, to load or cause to be loaden and carryed in any Bottom or Bottoms, Ship or Ships, Vessel or Vessels whatsover, whereof any Stranger or Strangers born (unless such as be Denizens or Naturalized) be Owners, part Owners or Master, Any Fish, Victual, Wares, or things of what kinde or nature soever the same shall be, from one Port or Creek of this Commonwealth to another Port or Creek of the same, under penalty to every one that shall offend contrary

to the true meaning of this Branch of this present Act, to forfeit all the Goods that shall be so laden or carried, as also the Ship upon which they shall be so laden or carried, the same Forfeit to be recovered and imployed as directed in the First Branch of this present Act.

Lastly, That this Act nor any thing therein contained, extend not to Bullion, nor yet to any Goods taken, or that shall be taken by way of Reprizal by any Ship or Ships, having Commission from this Commonwealth.

Provided, That this Act, or any thing therein contained, shall not extend, nor be construed to extend to any Silk or Silk-wares which shall be brought by Land from any parts of *Italy*, and there bought with the proceed of English Commodities, sold either for money or in Barter; but that it shall and may be lawful for any of the People of this Commonwealth to ship the same in English Vessels from *Ostend*, *Newport*, *Roterdam*, *Middleburgh*, *Amsterdam*, or any Ports thereabouts; The Owners and Proprietors first making Oath by themselves, or other credible Witness, before the Commissioners of the Customs for the time being or their Deputies, or one of the Barons of the Exchequer, That the Goods aforesaid were so bought for his or their own proper Accompt in *Italy*.

No. 23. First Navigation Act

1660

THE act of 1660, usually known as the First Navigation Act, embodied, in more systematic form, the important provisions of earlier acts, with the object of protecting both English and colonial shipping, and exploiting the colonial trade for the benefit of the mother country. As the act was passed by the Convention Parliament, it was confirmed in 1661 by the first Parliament, known technically as the thirteenth, regularly assembled after the restoration of Charles II.

REFERENCES. — *Text* in *Statutes of the Realm*, V., 246–250. The act is cited as 12 Car. II., c. 18. For general references, see under No. 22, *ante*.

AN ACT for the Encourageing and increasing of Shipping and Navigation.

[I.] For the increase of Shiping and incouragement of the Navigation of this Nation, wherin under the good providence and protection of God the Wealth Safety and Strength of this

Kingdome is soe much concerned Bee it Enacted by the Kings most Excellent Majesty and by the Lords and Commons in this present Parliament assembled and the Authoritie therof That from and after the First day of December One thousand six hundred and sixty and from thence forward noe Goods or Commodities whatsoever shall be Imported into or Exported out of any Lands Islelands Plantations or Territories to his Majesty belonging or in his possession or which may hereafter belong unto or be in the possession of His Majesty His Heires and Successors in Asia Africa or America in any other Ship or Ships Vessell or Vessells whatsoever but in such Ships or Vessells as doe truely and without fraude belong onely to the people of England or Ireland Dominion of Wales or Towne of Berwicke upon Tweede, or are of the built of, and belonging to any of the said Lands Islands Plantations or Territories as the Proprietors and right Owners therof and wherof the Master and three fourthes of the Marriners at least are English under the penalty of the Forfeiture and Losse of all the Goods and Commodityes which shall be Imported into, or Exported out of, any the aforesaid places in any other Ship or Vessell, as alsoe of the Ship or Vessell with all its Guns Furniture Tackle Ammunition and Apparell, one third part thereof to his Majesty his Heires and Successors, one third part to the Governour of such Land Plantation Island or Territory where such default shall be commited in case the said Ship or Goods be there seised, or otherwise that third part alsoe to his Majesty his Heires and Successors, and the other third part to him or them who shall Seize Informe or sue for the same in any Court of Record by Bill Information Plaint or other Action wherein noe Essoigne Protection or Wager of Law shall be allowed, And all Admiralls and other Commanders at Sea of any the Ships of War or other Ship haveing Commission from His Majesty or from his Heires or Successors are hereby authorized and strictly required to seize and bring in as prize all such Ships or Vessells as shall have offended contrary hereunto and deliver them to the Court of Admiralty there to be proceeded against and in case of condemnation one moyety of such Forfeitures shall be to the use of such Admiralls or Commanders and their Companies to be divided and proportioned amongst them according to the Rules and Orders of the Sea in [cases *] of Ships taken

* *Case* in the original Ms.

prize, and the other moyety to the use of his Majesty his Heires and Successors.

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[III.] And it is further Enacted . . . that noe Goods or Commodityes whatsoever of the growth production or manufacture of Africa Asia or America or of any part thereof, or which are discribed or laid downe in the usuall Maps or Cards of those places be Imported into England Ireland or Wales Islands of Guernsey or Jersey or Towne of Berwicke upon Tweede in any other Ship or Ships Vessell or Vessels whatsoever, but in such as doe truely and without fraude belong onely to the people of England or Ireland, Dominion of Wales or Towne of Berwicke upon Tweede or of the Lands Islands Plantations or Territories in Asia Africa or America to his Majesty belonging as the proprietors and right owners therof, and wherof the Master and three fourthes at least of the Mariners are English under the penalty of the forfeiture of all such Goods and Commodityes, and of the Ship or Vessell in which they were Imported with all her Guns Tackle Furniture Ammunition and Apparell, one moyety to his Majesty his Heires and Successors, and the other moyety to him or them whoe shall Seize Inform or Sue for the same in any Court of Record by Bill Information Plaint or other Action wherein noe Essoigne Protection or Wager in Law shall be allowed.

[IV.] And it is further Enacted . . . that noe Goods or Commodityes that are of forraigne growth production or manufacture and which are to be brought into England Ireland Wales, the Islands of Guernsey & Jersey or Towne of Berwicke upon Tweede in English built shiping, or other shiping belonging to some of the aforesaid places, and navigated by English Mariners as abovesaid shall be shiped or brought from any other place or Places, Country or Countries but onely from those of their said Growth Production or Manufacture, or from those Ports where the said Goods and Commodityes can onely or are or usually have beene first shiped for transportation and from none other Places or Countryes under the penalty of the forfeiture of all such of the aforesaid Goods as shall be Imported from any other place or Country contrary to the true intent and meaning hereof, as alsoe of the ship in which they were imported with all her Guns Furniture Ammunition Tackle and Apparel, one Moyety to His Majesty His Heires and Successors and the other Moyety to him

or them that shall seize informe or sue for the same in any Court of Record to be recovered as is before exprest,

[V.] And it is further Enacted by the Authority aforesaid That any sort of Ling Stockefish Pilchard, or any other kinde of dryed or salted fish usually fished for and caught by the people of England Ireland Wales or Towne of Berwicke upon Tweede, or any sort of Codfish or Herring, or any Oyle or Blubber made or that shall be made of any kinde of Fish whatsoever, or any Whale fines or Whale bones which shall be imported into England Ireland Wales or Towne of Berwicke upon Tweede not haveing beene caught in Vessels truely and properly belonging thereunto as Proprietors and right Owners thereof and the said Fish cured saved or dryed, and the Oyle and Blubber aforesaid (which shall be accompted and pay as oyle) not made by the people thereof, and shall be imported into England Ireland or Wales or Towne of Berwicke upon Tweede shall pay double Aliens custome.

[VI.] And be it further Enacted by the Authority aforesaid That from henceforth it shall not be lawfull to any person or persons whatsoever to Load or cause to be Loaden and carryed in any Bottome or Bottomes Ship or Ships Vessell or Vessels whatsoever wherof any Stranger or Strangers borne (unlesse such as [shall *] bee Denizens or Naturalized) be Owners part Owners or Master and wherof three Fourthes of the Mariners at least shall not be English any Fish Victuall Wares Goods Commodityes or [Goods †] of what kinde or Nature soever the same shall be from one Port or Creeke of England Ireland Wales Islands of Guernsey or Jersey or Towne of Berwicke upon Tweede to another Port or Creeke of the same or of any of them under penalty for every one that shall offend contrary to the true meaning of this branch of this present Act to forfeit all such goods . . . together with the Ship or Vessell and all her Guns Ammunition Tackle Furniture and Apparel, one moyety to His Majesty His Heires and Successors and the other moyety to him or them that shall Informe Seize or Sue for the same in any Court of Record to be recovered in manner aforesaid.

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[VIII.] And it is further Enacted . . . That noe Goods or Commodityes of the Growth Production or Manufacture of Mus-

* Omitted in the original Ms.
† The original Ms. has *things*.

covy or of any the Countryes Dominions or Territories to the Great Duke or Emporer of Muscovia or Russia belonging, As alsoe that noe sorts of Masts Timber or boards noe forraigne Salt Pitch Tar Rozin Hempe or Flax Raizins Figs Prunes Olive Oyles noe [sort*] of Corne or Graine Sugar Pot-ashes Wines Vinegar or Spirits called Aqua-vite or Brandy Wine shall from and after . . . [April 1, 1661] . . . be imported into England Ireland Wales or Towne of Berwicke upon Tweede in any Ship or Ships Vessel or Vessels whatsoever but in such as doe truely and without fraude belong to the people therof or of some of them as the true Owners and proprietors therof, and wherof the Master and Three Fourths of the Mariners at least are English, and that noe Currants, nor Commodityes of the growth production or Manufacture of any the Countryes Islands Dominions or Territories to the Othoman or Turkish Empire belonging shall from and after the first day of September which shall be in the yeare of our Lord One thousand six hundred sixty one be imported into any the forementioned places in any Ship or Vessel, but which is of English built and navigated as aforesaid and in noe other, except onely such forraigne ships and vessels as are of the built of that Country or place of which the said Goods are the growth production or Manufacture respectively, or of such Port where the said Goods can onely be or most usually are first shiped for transportation, and wherof the Master and three Fourths of the Mariners at least are of the said Country [and†] place under the penalty and forfeiture of Ship and Goods to be disposed and recovered as in the foregoing Clause.

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[XVIII.] And it is further Enacted . . . That from and after . . . [April 1, 1661] . . . noe Sugars Tobaccho Cotton Wool Indicoes Ginger Fustick or other dyeing wood of the Growth Production or Manufacture of any English Plantations in America Asia or Africa shall be shiped carryed conveyed or transported from any of the said English Plantations to any Land Island Territory Dominion Port or place whatsoever other then to such [‡] English Plantations as doe belong to His Majesty His Heires and Successors or to the Kingdome of England or Ireland or Principallity of Wales or Towne of Berwicke upon Tweede

* *sorts* in the original Ms. † *or* in the original Ms.
‡ The Ms. inserts *other*.

there to be laid on shore under the penalty of the Forfeiture of the said Goods or the full value thereof, as alsoe of the Ship with all her Guns Tackle Apparel Ammunition and Furniture, the one moyety to the Kings Majesty His Heires and Successors, and the other moyety to him or them that shel seize informe or sue for the same in any Court of Record by Bil Plaint or Information wherein noe Essoyne Protection or Wager of Law shall be allowed.

[XIX.] And be it further Enacted . . . That for every Ship or Vessel which from and after . . . [December 25, 1660] . . . shall set saile out of, or from England Ireland Wales or Towne of Berwicke upon Tweede for any English Plantation in America Asia [or] Africa sufficient bond shall be given with one surety to the cheife Officers of the Custome house, of such Port or place from whence the said Ship shall set saile to the value of one thousand pounds if the ship be of lesse burthen then one hundred Tuns, and of the summe of two thousand pounds if the Ship [shal] be of greater burthen, That in case the said Ship or Vessel shall loade any of the said Commodityes at any of the said English Plantations, that the same Commodityes shall be by the said ship brought to some Port of England Ireland Wales, or to the Port or Towne of Berwicke upon Tweede and shall there unload and put on shore the same, the danger of the Seas onely excepted, And for all ships coming from any other Port or Place to any of the aforesaid plantations who by this Act are permited to trade there, that the Governour of such English plantation shall before the said Ship or Vessel be permited to loade on board any of the said Commodityes take Bond in manner and to the value aforesaid for each respective Ship or Vessel, That such Ship or Vessell shall carry all the aforesaid Goods that shall be laden on board in the said ship to some other of His Majestyes English Plantations, or to England Ireland Wales or Towne of Berwicke upon Tweede, And that every ship or vessel [that*] shall loade or take on board any of the aforesaid Goods until such Bond given to the said Governour or Certificate produced from the Officers of any Custome house of England Ireland Wales or of the Towne of Berwicke that such bond have beene there duely given, shall be forfeited with all her Guns Tackle Apparel and Furniture to be imployed and recovered in manner [as] aforesaid. . . .

* *which* in the original MS.

No. 24. Charter of Connecticut

April 23/May 3, 1662

In May, 1661, the General Court of Connecticut appointed a committee to prepare a petition for a royal charter. Governor Winthrop, to whom the negotiations were intrusted, had the influential support of Lord Say and Sele and the Earl of Manchester; and in April, 1662, the charter was granted. The boundaries, as defined by the charter, included New Haven. The delay of the latter colony in proclaiming Charles II., and its tender treatment of the regicides, had brought it into disfavor with the king; and it now, under the lead of Davenport, resisted annexation, and appealed to the Commissioners of the United Colonies. But the conquest of New Netherland by the English, in 1664, and the grant to the Duke of York of territory as far east as the Connecticut River, hastened submission; and in December of the latter year a committee was appointed to arrange for the union. A *quo warranto* was issued against the Connecticut charter in 1684, but judgment was not entered. When Andros demanded the charter, in 1687, it was secreted, and remained hidden until 1689, when, upon the deposition of Andros, government under the charter was resumed. The State constitution of 1776 continued the charter in force, with a few changes, and it remained the fundamental law of Connecticut until the adoption of a new constitution in 1818.

References. — *Text* in *Connecticut Colonial Records*, II., 3–11. Winthrop's instructions, the address to the King, and the letter to the Earl of Manchester, are in *ib.*, I., 579–585. For the proceedings in New Haven, see the *New Haven Colonial Records*, 1653–1665, *passim*. See also Bowen's *Boundary Disputes of Connecticut;* Trumbull's *Connecticut*, I., chap. 12; Doyle's *Puritan Colonies*, II., 154–162.

Charles the Second, [&c.] **Whereas**, by the severall Navigations, discoveryes and successfull Plantations of diverse of our loveing Subjects of this our Realme of England, Severall Lands, Islands, Places, Colonies and Plantations have byn obtayned and setled in that parte of the Continent of America called New England, and thereby the Trade and Comerce there hath byn of late yeares much increased, **And whereas**, We have byn informed by the humble Petition of our Trusty and welbeloved John Winthrop, John Mason, Samuell Willis, Henry Clerke, Mathew Allen, John Tappen, Nathan Gold, Richard Treate, Richard Lord, Henry Woolicot, John Talcott, Daniell Clerke, John Ogden, Thomas Wells, Obedias Brewen, John Clerke, Anthony Haukins, John Deming, and Mathew Camfeild, being Persons Principally interested in our Colony or Plantation of Conecticutt in New England, that the same Colony or the greatest parte thereof was purchased

and obteyned for greate and valuable considerations, And some other parte thereof gained by Conquest and with much difficulty, and att the onely endeavours, expence and Charge of them and their Associates, and those under whome they Clayme, Subdued and improved, and thereby become a considerable enlargement and addition of our Dominions and interest there,— **Now Know yea**, that in Consideration thereof, and in regard the said Colony is remote from other the English Plantations in the Places aforesaid, And to the end the Affaires and Busines which shall from tyme to tyme happen or arise concerning the same may bee duely Ordered and managed, **Wee have** thought fitt, and att the humble Petition of the Persons aforesaid, and are graciously pleased to Create and Make them a Body Pollitique and Corporate, with the powers and Priviledges herein after mentioned; And accordingly **wee** . . . by theis presents . . . **Doe** Ordeine, Constitute and Declare That they, the said John Winthrop . . . [and others] . . . , and all such others as now are or hereafter shall bee Admitted and made free of the Company and Society of our Collony of Conecticut in America, shall . . . bee one Body Corporate and Pollitique in fact and name, by the Name of Governour and Company of the English Collony of Conecticut in New England in America; . . . **And** further, wee . . . **Doe** Declare and appoint, that for the better ordering and manageing of the affaires and businesse of the said Company and their Successors, there shall be one Governour, one Deputy Governour and Twelve Assistants, to bee from tyme to tyme Constituted, Elected and Chosen out of the Freemen of the said Company for the tyme being, in such manner and forme as hereafter in these presents is expressed; which said Officers shall apply themselves to take care for the best disposeing and Ordering of the Generall busines and affaires of and concerning the lands and hereditaments herein after mentioned to bee graunted, and the Plantation thereof and the Government of the People thereof. And . . . **Wee doe** . . . Constitute and appoint the aforesaid John Winthrop to bee the first and present Governour of the said Company; And the said John Mason to bee the Deputy Governour; And the said Samuell Willis, Mathew Allen, Nathan Gold, Henry Clerke, Richard Treat, John Ogden, Thomas Tappen, John Talcott, Thomas Wells, Henry Woolcot, Richard Lord and Daniell Clerke to bee the Twelve present Assistants of the said Company; to contynue

in the said severall Offices respectively untill the second Thursday which shall bee in the Moneth of October now next comeing. **And** further, wee . . . **Doe** Ordaine and Graunt that the Governour of the said Company for the tyme being, or, in his absence by occasion of sicknes, or otherwise by his leave or permission, the Deputy Governour for the tyme being, shall and may from tyme to tyme upon all occasions give Order for the assembling of the said Company and calling them together to Consult and advise of the businesse and Affaires of the said Company, And that for ever hereafter, Twice in every yeare, (That is to say,) on every second Thursday in October and on every second Thursday in May, or oftener, in Case it shall be requisite, The Assistants and freemen of the said Company, or such of them (not exceeding twoe Persons from each place, Towne or Citty) whoe shall bee from tyme to tyme thereunto Elected or Deputed by the major parte of the freemen of the respective Townes, Cittyes and Places for which they shall bee soe elected or Deputed, shall have a generall meeting or Assembly, then and their to Consult and advise in and about the Affaires and businesse of the said Company; And that the Governour, or . . . Deputy Governour . . . , and such of the Assistants and freemen of the said Company as shall be soe Elected or Deputed and bee present att such meeting or Assembly, or the greatest number of them, whereof the Governour or Deputy Governour and Six of the Assistants, at least, to bee Seaven, shall be called the Generall Assembly, and shall have full power and authority to alter and change their dayes and tymes of meeting or Generall Assemblies for Electing the Governour, Deputy Governour and Assistants or other Officers, or any other Courts, Assemblies or meetings, and to Choose, Nominate and appoint such and soe many other Persons as they shall thinke fitt and shall bee willing to accept the same, to bee free of the said Company and Body Politique, and them into the same to Admitt and to Elect, and Constitute such Officers as they shall thinke fitt and requisite for the Ordering, mannageing and disposeing of the Affaires of the said Governour and Company and their Successors. **And wee doe** hereby . . . Establish and Ordeine, that once in the yeare . . . , namely, the said Second Thursday in May, the Governour, Deputy Governour and Assistants of the said Company and other Officers of the said Company, or such of them as the said Generall Assembly shall thinke fitt,

shall bee, in the said Generall Court and Assembly to bee held from that day or tyme, newly Chosen for the yeare ensuing, by such greater part of the said Company for the tyme being then and there present. . . . **And Knowe yee further,** That Wee . . . **Doe** give, Graunt and Confirme unto the said Governor and Company and their Successors, **All** that parte of our Dominions in Newe England in America bounded on the East by Norrogancett River, comonly called Norrogancett Bay, where the said River falleth into the Sea, and on the North by the lyne of the Massachusetts Plantation, and on the South by the Sea, and in longitude as the lyne of the Massachusetts Colony, runinge from East to West, (that is to say,) from the said Narrogancett Bay on the East to the South Sea on the West parte, with the Islands thereunto adjoyneinge. . . .

No. 25. Explanatory Navigation Act

1662

QUESTION having arisen in regard to the definition of English built ships and English mariners, under the act of 1660, these terms were further defined by a section of the act of 1662. Only the section in question is here given.

REFERENCES. — *Text* in *Statutes of the Realm*, V., 394, 395. The act is cited as 14 Car. II., c. 11.

AN ACT for preventing Frauds and regulating Abuses in His Majesties Customes.

[Sec. V.] . . .* And that no Forreign built Ship (that is to say) not built in any of His Majesties Dominions of Asia Africa or America or other then such as shall (bona fide) be bought before the First of October One thousand six hundred sixty and two next ensuing and expresly named in the said List shall enjoye the priviledge of a Ship belonging to England or Ireland although owned or manned by English (except such Ships only as shall be taken at Sea by Letters of Mart or Reprizal and Condemnation made in the Court of Admiralty as lawfull Prize) but all such Ships shall be deemed as Aliens Ships and be liable unto all Duties that Aliens Ships are liable unto by vertue of the said Act

* The omitted part of the section requires Collectors of Customs to transmit to the Court of Exchequer lists of foreign-built ships, English owned.

for encrease of Shipping and Navigation And whereas it is required by the said Act that in sundry cases the Master and three fourths of the Mariners are to be English it is to be understood that any of His Majesties Subjects of England Ireland and His Plantations are to bee accounted English and no others and that the number of Mariners be accounted according to what they shall have been during the whole Voyage.

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No. 26. First Charter of Carolina

March 24/April 3, 1662/3

THE region later known as Carolina had been included in the original Virginia grant of 1606; but no permanent settlements had been made, and on the revocation of the third Virginia charter, in 1624, the territory became subject to the disposal of the Crown. In 1629, Sir Robert Heath, then attorney-general, received from Charles I. a grant of the region south of Virginia, between 31° and 36° north latitude, under the name of Carolana; but no use was made of the grant, and no further attempt was made to develop the country until the grant of a charter to Clarendon and his associates, in March, 1662/3. An order in council of Aug. 12/22, 1663, declared the Heath patent void for non-user; but claims under it continued to be urged until 1768, when the descendants of Daniel Coxe, of New Jersey, to whom the patent had been transferred in 1696, received from the Crown a grant of 100,000 acres of land in New York in satisfaction of their claim.

REFERENCES. — *Text* in *Statutes at Large of South Carolina* (Cooper's ed., 1836), I., 22–31. The Heath grant is in *Colonial Records of North Carolina*, I., 1–13. For the documentary sources see, beside the *Records*, Carroll's *Historical Collections of South Carolina;* Sainsbury's *Calendar of State Papers*, Colonial, V., VI. On the early history of South Carolina, McCrady's *History of South Carolina under the Proprietary Government* is of prime importance; see also Rivers's *Sketch of the History of South Carolina;* Whitney's *Government in the Colony of South Carolina*, in Johns Hopkins Univ. *Studies*, XIII., Nos. 1 and 2. On North Carolina see Hawks's *History of North Carolina*, II.; Bassett's *Constitutional Beginnings North Carolina*, in Johns Hopkins Univ. *Studies*, XII., No. 3.

CHARLES THE SECOND, [&c.]. . . .

1st. WHEREAS our right trusty, and right well beloved Cousins and Counsellors, *Edward*, Earl of Clarendon, our high Chancellor of England, and *George*, Duke of Albemarle, Master of our horse and Captain General of all our Forces, our right trusty

and well beloved *William* Lord Craven, *John* Lord Berkley, our right trusty and well beloved Counsellor, *Anthony* Lord Ashley, Chancellor of our Exchequer, Sir *George Carteret*, Knt. and Baronet, Vice Chamberlain of our household, and our trusty and well beloved Sir *William Berkley*, Knt. and Sir *John Colleton*, Knight and Baronet, being excited with a laudable and pious zeal for the Propagation of the Christian Faith, and the Enlargement of our Empire and Dominions, have humbly besought leave of us by their industry and charge, to transport and make an ample Colony of our subjects, natives of our Kingdom of England, and elsewhere within our Dominions, unto a certain country hereafter described, in the parts of America not yet cultivated or planted, and only inhabited by some barbarous people, who have no knowledge of Almighty God.

2d. And *whereas* the said Edward, Earl of Clarendon, . . . [and others] . . . have humbly besought us to give, grant and confirm unto them and their heirs, the said country, with Priviledges and Jurisdictions requisite for the good government and safety thereof: KNOW YE, therefore, that we, favouring the pious and noble purpose of the said Edward Earl of Clarendon . . . [and others] . . . by this our present Charter . . . do Give, Grant and Confirm unto the said Edward Earl of Clarendon . . . [and others] . . . all that territory or tract of ground, scituate, lying and being within our dominions of America, extending from the North end of the Island called Lucke-Island, which lieth in the Southern Virginia Seas, and within six and thirty degres of the Northern Latitude, and to the West as far as the South Seas, and so Southerly as far as the river St. Matthias, which bordereth upon the coast of Florida, and within one and thirty degrees of Northern Latitude, and so west in a direct line as far as the South seas aforesaid. . . .

3d. And furthermore, the Patronage and Advowsons of all the Churches and Chapels, which as Christian Religion shall increase within the Country . . . shall happen hereafter to be erected, together with license and power to build and found Churches, Chappels and Oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated according to the Ecclesiastical laws of our Kingdom of England, together with all and singular the like, and as ample Rights, Jurisdictions, Priviledges, Prerogatives, Royalties, Liber-

ties, Immunities and Franchises of what kind soever, within the Countries, Isles, Islets, and Limits aforesaid.

4th. To have, use, exercise and enjoy, and in as ample manner as any Bishop of Durham in our Kingdom of England, ever heretofore have held, used or enjoyed, or of right ought or could have, use, or enjoy. And them, the said Edward Earl of Clarendon . . . [and others] . . . their heirs and assigns, We do by these Presents . . . make, create and constitute, the true and Absolute Lords Proprietors of the Country aforesaid, and of all other the premises; saving always the faith, allegiance and sovereign dominion due to us . . . for the same, and saving also the right, title, and interest of all and every our subjects of the English nation, which are now planted within the limits and bounds aforesaid, (if any be), . . . yielding and paying yearly to us, our heirs and successors, for the same, the yearly rent of twenty marks of lawful money of England, at the feast of All Saints, yearly forever, the first payment thereof to begin and to be made on the feast of All Saints, which shall be in the year of our Lord one thousand six hundred and sixty-five, and also the fourth part of all gold or silver ore, which, within the limits aforesaid, shall from time to time happen to be found.

5th. And that the country, thus by us granted and described, may be dignified by us with as large Titles and Priviledges as any other part of our Dominions and territories in that region, Know ye, that we . . . do . . . erect, incorporate and ordain the same into a Province, and call it the Province of Carolina . . . (and forasmuch as we have hereby made and ordained the aforesaid Edward, Earl of Clarendon . . . [and others] . . . the true Lords and Proprietors of all the Province aforesaid; Know ye, therefore moreover, that we . . . do grant full and absolute power by virtue of these presents, to them . . . for the good and happy Government of the said Province, to ordain, make, enact, and under their seals to publish any laws whatsoever, either appertaining to the publick state of the said Province, or to the private utility of particular persons, according to their best discretion, of and with the advice, assent and approbation of the Freemen of the said Province, or of the greater part of them, or of their Delegates or Deputies, whom for enacting of the said laws, when and as often as need shall require, we will that the said Edward, Earl of Clarendon . . . [and others] . . . shall from time to time assem-

ble in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said Province and limits thereof. . . .

6th. And because such assemblies of freeholders cannot be so conveniently called, as there may be occasion to require the same, we do, therefore, by these presents, give and grant unto the said Edward, Earl of Clarendon . . . [and others] . . . by themselves or their magistrates, in that behalf lawfully authorized, full power and authority, from time to time to make and ordain fit and wholesome Orders and Ordinances, within the Province aforesaid, to be kept and observed as well for the keeping of the peace, as for the better government of the people there abiding, and to publish the same to all to whom it may concern; which ordinances, we do by these presents streightly charge and command to be inviolably observed within the said Province, under the penalties therein expressed, so as such Ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our Kingdom of England, and so as the same ordinances do not extend to the binding, charging, or taking away of the right or interest of any person or persons, in their freehold, goods or chattels whatsoever.

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9th. Provided nevertheless, . . . and we . . . by these presents . . . do give and grant unto the said Edward Earl of Clarendon . . . [and others] . . . , full and free license, liberty, and authority, at any time or times, from and after the feast of St. Michael the Arch-Angel, which shall be in the year of our Lord Christ, one thousand, six hundred, sixty and seven, as well to import, and bring into any of our Dominions from the said Province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned, that is to say, silks, wines, currants, raisins, capers, wax, almonds, oyl, and olives, without paying or answering to us . . . any custom, import, or other duty, for and in respect thereof for and during the term and space of seven years, to commence and be accompted, from and after the first importation of four tons of any the said goods, in any one bottom, ship or vessel from the said Province, into any of our Dominions; as also to export and carry out of any of our Dominions, into the said Province of Carolina, custom free, all sorts of tools which shall be usefull or necessary for the planters

there, in the accommodation and improvement of the premises, any thing before, in these presents contained, or any law, act, statute, prohibition, or other matter, or anything heretofore had, made, enacted or provided, or hereafter to be had, made, enacted for provided to the contrary, in any wise notwithstanding.

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13th. And because many persons born, or inhabiting in the said Province, for their deserts and services, may expect and be capable of marks of honour and favour, which, in respect of the great distance, cannot be conveniently conferred by us; . . . we do . . . give and grant unto the said Edward Earl of Clarendon . . . [and others] . . . full power and authority, to give and confer, unto and upon, such of the inhabitants of the said Province, as they shall think do, or shall merit the same, such marks of favour and titles of honour as they shall think fit, so as these titles of honour be not the same as are enjoyed by, or conferred upon any the subjects of this our Kingdom of England.

14th. And further also, we do by these presents, . . . give and grant license to them . . . full power, liberty and license to erect, raise and build within the said Province and places aforesaid, or any part or parts thereof, such and so many forts, fortresses, castles, cities, buroughs, towns, villages and other fortifications whatsoever, and the same or any of them to fortify . . . and also to place, constitute and appoint in and over all or any of the castles, forts, fortifications, cities, towns and places aforesaid, governors, deputy governors, magistrates, sheriffs and other officers, civil and military, as to them shall seem meet, and to the said cities, buroughs, towns, villages, or any other place, or places within the said Province, to grant "letters or charters of incorporation," with all liberties, franchises and priviledges, requisite and usefull, or to or within any corporations, within this our Kingdom of England, granted or belonging; and in the same cities, buroughs, towns and other places, to constitute, erect and appoint such and so many markets, marts and fairs, as shall in that behalf be thought fit and necessary; and further also to erect and make in the Province aforesaid, or any part thereof, so many mannors, as to them shall seem meet and convenient. . . .

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18th. And because it may happen that some of the people and inhabitants of the said Province, cannot in their private opinions,

conform to the publick exercise of religion, according to the liturgy form and ceremonies of the Church of England, or take and subscribe the oath and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope, be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents . . . give and grant unto the said Edward, Earl of Clarendon . . . [and others] . . . full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within the said Province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they . . . shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such indulgencies and dispensations shall be granted as aforesaid, do and shall, from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said Province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms, and ceremonies, or any thing relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto.

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No. 27. Charter of Rhode Island and Providence Plantations

July 8/18, 1663

In January, 1661, John Clarke, sometime agent of Rhode Island in England, presented a petition for a royal charter for that colony. The promptness of Rhode Island in proclaiming Charles II., and the willingness of the king to restrain the ambitions of Massachusetts, caused the petition to

be favorably regarded. The charter of Connecticut, however, in 1662, included within the limits of that colony certain territory on Narragansett Bay long in dispute between Massachusetts and Rhode Island, and now held by the Atherton Company, a land-speculating organization of which Winthrop was a member. An effort on the part of Rhode Island, in 1660, to come to terms with this company had been unsuccessful. Clarke entered a protest against the Connecticut grant; but, by agreement with Winthrop, the controversy was presently referred to arbitrators. The decision, in April, 1663, was favorable to Rhode Island, and in July the charter was issued. With the exception of the brief period of Andros's administration, 1686–1689, during which the government was carried on by the towns, the charter continued to be the fundamental law of Rhode Island until the adoption of a State constitution in 1842.

REFERENCES. — *Text* in *Rhode Island Colonial Records*, II., 3–21. See Doyle's *Puritan Colonies*, I., 357–365, and references under No. 18, *ante*.

Charles the Second, [&c.] . . . : Whereas wee have been informed, by the humble petition of our trustie and well beloved subject, John Clarke, on the behalfe of Benjamine Arnold, William Brenton, William Codington, Nicholas Easton, William Boulston, John Porter, John Smith, Samuell Groton, John Weeks, Roger Williams, Thomas Olnie, Gregorie Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, Samuell Wildbore, William Ffield, James Barker, Richard Tew, Thomas Harris, and William Dyre, and the rest of the purchasers and ffree inhabitants of our island, called Rhode-Island, and the rest of the colonie of Providence Plantations, in the Narragansett Bay, in New-England, in America, that they, pursueing, with peaceable and loyall mindes, their sober, serious and religious intentions, of godlie edifieing themselves, and one another, in the holie Christian ffaith and worshipp as they were perswaded: together with the gaineing over and conversione of the poore ignorant Indian natives, in those partes of America, to the sincere professione and obedienc of the same ffaith and worship, did, not onlie by the consent and good encouragement of our royall progenitors, transport themselves out of this kingdome of England into America, but alsoe, since their arrivall there, after their first settlement amongst other our subjects in those parts, ffor the avoideing of discorde, and those manie evills which were likely to ensue upon some of those oure subjects not beinge able to beare, in these remote partes, theire different apprehensiones in religious concernments, and in pursueance of the afforesayd

ends, did once againe leave theire desireable stationes and habitationes, and with excessive labor and travell, hazard and charge, did transplant themselves into the middest of the Indian natives, who, as wee are infformed, are the most potent princes and people of all that country; where, by the good Providence of God, from whome the Plantationes have taken their name, upon theire labour and industrie, they have not onlie byn preserved to admiration, but have increased and prospered, and are seized and possessed, by purchase and consent of the said natives, to their ffull content, of such lands, islands, rivers, harbours and roades, as are verie convenient, both for plantationes and alsoe for buildinge of shipps, suplye of pype-staves, and other merchandize; and which lyes verie commodious, in manie respects, for commerce, and to accommodate oure southern plantationes, and may much advance the trade of this oure realme, and greatlie enlarge the territories thereof; they haveinge, by neare neighbourhoode to and friendlie societie with the greate bodie of the Narragansett Indians, given them encouragement, of theire owne accorde, to subject themselves, theire people and landes, unto us; whereby, as is hoped, there may, in due tyme, by the blessing of God upon theire endeavours, bee layd a sure ffoundation of happinesse to all America: And whereas, in theire humble addresse, they have ffreely declared, that it is much on their hearts (if they may be permitted), to hold forth a livelie experiment, that a most flourishing civill state may stand and best bee maintained, and that among our English subjects, with a full libertie in religious concernements; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to sovereignetye, and will lay in the hearts of men the strongest obligations to true loyaltye: Now know yee, that wee beinge willinge to encourage the hopefull undertakeinge of oure sayd loyall and loveinge subjects, and to secure them in the free exercise and enjoyment of all theire civill and religious rights, appertaining to them, as our loveing subjects; and to preserve unto them that libertye, in the true Christian ffaith and worshipp of God, which they have sought with soe much travaill, and with peaceable myndes, and loyall subjectione to our royall progenitors and ourselves, to enjoye; and because some of the people and inhabitants of the same colonie cannot, in theire private opinions, conforme to the publique exercise of religion, according to the

litturgy, formes and ceremonyes of the Church of England, or take or subscribe the oaths and articles made and established in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) bee noe breach of the unitie and unifformitie established in this nation: Have therefore thought ffit, and doe hereby publish, graunt, ordeyne and declare, That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freelye and fullye have and enjoye his and theire owne judgments and consciences, in matters of religious concernments, throughout the tract of lande hereafter mentioned; they behaving themselves peaceablie and quietlie, and not useing this libertie to lycentiousnesse and profanenesse, nor to the civill injurye or outward disturbeance of others; any lawe, statute, or clause, therein contayned, or to bee contayned, usage or custome of this realme, to the contrary hereof, in any wise, notwithstanding. And that they may bee in the better capacity to defend themselves, in theire just rights and libertyes against all the enemies of the Christian ffaith, and others, in all respects, wee . . . further . . . declare, That they shall have and enjoye the benefitt of our late act of indempnity and ffree pardon, as the rest of our subjects in other our dominions and territoryes have; and to create and make them a bodye politique or corporate, with the powers and priviledges hereinafter mentioned. And accordingely . . . wee . . . doe ordeyne, constitute and declare, That they, the sayd William Brenton, William Codington, Nicholas Easton, Benedict Arnold, William Boulston, John Porter, Samuell Gorton, John Smith, John Weekes, Roger Williams, Thomas Olneye, Gregorie Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, William Dyre, Samuell Wildbore, Rickard Tew, William Ffeild, Thomas Harris, James Barker, —— Rainsborrow, —— Williams, and John Nickson, and all such others as now are, or hereafter shall bee admitted and made ffree of the company and societie of our collonie of Providence Plantations, in the Narragansett Bay, in New-England, shall bee, from tyme to tyme, and forever hereafter, a bodie corporate and politique,

in ffact and name, by the name of The Governor and Company of the English Collonie of Rhode-Island and Providence Plantations, in New-England, in America. . . . And further, wee . . . doe declare and apoynt that, for the better ordering and managing of the affaires and business of the sayd Company, and theire successours, there shall bee one Governour, one Deputie-Governour and ten Assistants, to bee from tyme to tyme, constituted, elected and chosen, out of the freemen of the sayd Company, for the tyme beinge, in such manner and fforme as is hereafter in these presents expressed; which sayd officers shall aplye themselves to take care for the best disposeinge and orderinge of the generall businesse and affaires of, and concerneinge the landes and hereditaments hereinafter mentioned, to be graunted, and the plantation thereof, and the government of the people there. And . . . wee doe . . . apoynt the aforesayd Benedict Arnold to bee the first and present Governor of the sayd Company, and the sayd William Brenton to bee the Deputy-Governor, and the sayd William Boulston, John Porter, Roger Williams, Thomas Olnie, John Smith, John Greene, John Cogeshall, James Barker, William Ffeild, and Joseph Clarke, to bee the tenn present Assistants of the sayd Companye, to continue in the sayd severall offices, respectively, until the first Wednesday which shall bee in the month of May now next comeing. And further, wee . . . doe ordeyne and graunt, that the Governor of the sayd Company, for the tyme being, or, in his absence, by occasion of sicknesse, or otherwise, by his leave and permission, the Deputy-Governor, ffor the tyme being, shall and may, ffrom tyme to tyme, upon all occasions, give order ffor the assemblinge of the sayd Company, and callinge them together, to consult and advise of the businesse and affaires of the sayd Company. And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the moneth of May, and on every last Wednesday in October, or oftener, in case it shall bee requisite, the Assistants, and such of the ffreemen of the Company, not exceedinge six persons ffor Newport, ffoure persons ffor each of the respective townes of Providence, Portsmouth and Warwicke, and two persons for each other place, towne or city, whoe shall bee, from tyme to tyme, thereunto elected or deputed by the majour parte of the ffreemen of the respective townes or places ffor which they shall bee so elected or deputed, shall have a generall meetinge, or Assembly then and there to

consult, advise and determine, in and about the affaires and businesse of the said Company and Plantations. And further, wee doe . . . give and graunt unto the sayd Governour and Company of the English collony of Rhode-Island and Providence Plantations, in New-England, in America, and theire successours, that the Governour, or, in his absence, or, by his permission, the Deputy-Governour of the sayd Company, for the tyme beinge, the Assistants, and such of the ffreemen of the sayd Company as shall bee soe as aforesayd elected or deputed, or soe many of them as shall bee present att such meetinge or assemblye, as afforesayde, shall bee called the Generall Assemblye; and that they, or the greatest parte of them present, whereof the Governour or Deputy-Governour, and sixe of the Assistants, at least to bee seven, shall have . . . ffull power [*and*] authority, ffrom tyme to tyme, and at all tymes hereafter, to apoynt, alter and change, such dayes, tymes and places of meetinge and Generall Assemblye, as theye shall thinke ffitt; And further . . . wee doe . . . establish and ordeyne, that yearelie, once in the yeare, forever hereafter, namely, the aforesayd Wednesday in May, and at the towne of Newport, or elsewhere, if urgent occasion doe require, the Governour, Deputy-Governour and Assistants of the sayd Company, and other officers of the sayd Company, or such of them as the Generall Assemblye shall thinke ffitt, shall bee, in the sayd Generall Court or Assembly to bee held from that daye or tyme, newly chosen for the year ensueing, by such greater part of the sayd Company, for the tyme beinge, as shall bee then and there present; . . . And wee doe likewise . . . give and graunt unto the sayd Governour and Company, and theire successours, by these presents, that, for the more peaceable and orderly government of the sayd Plantations, it shall and may bee lawfull ffor the Governour, Deputy-Governour, Assistants, and all other officers and ministers of the sayd Company, in the administration of justice, and exercise of government, in the sayd Plantations, to use, exercise, and putt in execution, such methods, rules, orders and directions, not being contrary or repugnant to the laws and statutes of this oure realme, as have byn heretofore given, used and accustomed, in such cases respectively, to be putt in practice, untill att the next or some other Generall Assembly, speciall provision shall be made and ordeyned in the cases aforesayd. And wee doe ffurther . . . graunt . . . that itt

shall and may bee lawfull to and for the sayd Governour, or in his absence, the Deputy-Governour, and majour parte of the sayd Assistants, for the tyme being, att any tyme when the sayd Generall Assembly is not sitting, to nominate, apoynt and constitute, such and soe many commanders, governours, and military officers, as to them shall seeme requisite, for the leading, conductinge and trayneing upp the inhabitants of the sayd Plantations in martiall affaires, and for the defence and safeguard of the sayd Plantations; . . . Neverthelesse, our will and pleasure is, and wee doe hereby declare to the rest of oure Collonies in New-England, that itt shall not bee lawefull ffor this our sayd Collony of Rhode-Island and Providence Plantationes, in America, in New-England, to invade the natives inhabiting within the boundes and limitts of theire sayd Collonies without the knowledge and consent of the sayd other Collonies. And itt is hereby declared, that itt shall not bee lawfull to or ffor the rest of the Collonies to invade or molest the native Indians, or any other inhabitants, inhabiting within the bounds and lymitts hereafter mentioned (they having subjected themselves unto us, and being by us taken into our speciall protection), without the knowledge and consent of the Governour and Company of our Collony of Rhode-Island and Providence Plantations. . . . And further alsoe, wee are gratiously pleased, and doe hereby declare, that if any of the inhabitants of oure sayd Collony doe sett upon the plantinge of vineyards (the soyle and clymate both seemeing naturally to concurr to the production of wynes), or bee industrious in the discovery of ffishing banks, in or about the sayd Collony, wee will, ffrom tyme to tyme, give and allow all due and fitting encouragement therein, as to others in cases of lyke nature. . . . And ffurther, know ye, that wee . . . doe give, graunt and confirme, unto the sayd Governour and Company, and theire successours, all that parte of our dominiones in New-England, in America, conteyneing the Nahantick and Nanhyganset Bay, and countryes and partes adjacent, bounded on the west, or westerly, to the middle or channel of a river there, commonly called and known by the name of Pawcatuck, alias Pawcawtuck river, and soe along the sayd river, as the greater or middle streame thereof reacheth or lyes vpp into the north countrye, northward, unto the head thereof, and from thence, by a streight lyne drawne due north, untill itt meets with the south lyne of the Massachusetts Collonie;

and on the north, or northerly, by the aforesayd south or southerly lyne of the Massachusettes Collony or Plantation, and extending towards the east, or eastwardly, three English miles to the east and north-east of the most eastern and north-eastern parts of the aforesayd Narragansett Bay, as the sayd bay lyeth or extendeth itself from the ocean on the south, or southwardly, unto the mouth of the river which runneth towards the towne of Providence, and from thence along the eastwardly side or banke of the sayd river (higher called by the name of Seacunck river), up to the ffals called Patuckett ffalls, being the most westwardly lyne of Plymouth Collony, and soe from the sayd ffalls, in a streight lyne, due north, untill itt meete with the aforesayd lyne of the Massachusetts Collony; and bounded on the south by the ocean: and, in particular, the lands belonging to the townes of Providence, Pawtuxet, Warwicke, Misquammacok, alias Pawcatuck, and the rest upon the maine land in the tract aforesaid, together with Rhode-Island, Blocke-Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering upon the coast of the tract aforesayd (Ffisher's Island only excepted), . . . any graunt, or clause in a late graunt, to the Governour and Company of Connecticutt Collony, in America, to the contrary thereof in any wise notwithstanding; the aforesayd Pawcatuck river haveing byn yeilded, after much debate, for the fixed and certain boundes betweene these our sayd Collonies, by the agents thereof; whoe have alsoe agreed, that the sayd Pawcatuck river shall bee alsoe called alias Norrogansett or Narrogansett river; and, to prevent future disputes, that otherwise might arise thereby, forever hereafter shall bee construed, deemed and taken to bee the Narragansett river in our late graunt to Connecticutt Collony mentioned as the easterly bounds of that Collony. And further, our will and pleasure is, that in all matters of publique controversy which may fall out betweene our Collony of Providence Plantations, and the rest of our Collonies in New-England, itt shall and may bee lawfull to and for the Governour and Company of the sayd Collony of Providence Plantations to make their appeals therein to us, our heirs and successours, for redresse in such cases, within this our realme of England: and that itt shall be lawfull to and for the inhabitants of the sayd Collony of Providence Plantations, without let or molestation, to passe and repasse with freedome, into and through the rest of the English Collonies, upon their

lawfull and civill occasions, and to converse, and hold commerce and trade, with such of the inhabitants of our other English Collonies as shall bee willing to admitt them thereunto, they behaveing themselves peaceably among them; any act, clause or sentence, in any of the sayd Collonies provided, or that shall bee provided, to the contrary in anywise notwithstanding. . . .

No. 28. Second Navigation Act

1663

THE navigation act of 1660 had assured to English vessels a monopoly of the carrying trade between the colonies and England; but English vessels might still trade, except in certain "enumerated articles," directly between colonial and foreign ports. The act of 1663 aimed to benefit the merchants as well as the shipowners, by securing to English merchants the control of the colonial import trade.

REFERENCES.— *Text* in *Statutes of the Realm*, V., 449–452. The act is cited as 15 Car. II, c. 7.

AN ACT for the Encouragement of Trade.

[IV.] AND in reguard His Majesties Plantations beyond the Seas are inhabited and peopled by His Subjects of this His Kingdome of England, For the maintaining a greater correspondence and kindnesse betweene them and keepeing them in a firmer dependance upon it, and rendring them yet more beneficiall and advantagious unto it in the farther Imployment and Encrease of English Shipping and Seamen, vent of English Woollen and other Manufactures and Commodities rendring the Navigation to and from the same more safe and cheape, and makeing this Kingdome a Staple not onely of the Commodities of those Plantations but alsoe of the Commodities of other Countryes and Places for the supplying of them, and it being the usage of other Nations to keepe their [Plantations*] Trade to themselves, Be it enacted and it is hereby enacted That from and after the Five and twentyeth day of March One thousand six hundred sixtie fower noe Commoditie of the Growth Production or Manufacture of Europe shall be imported into any Land Island Plantation Colony Territory or Place to His Majestie belonging, or which shall [belong

* *Plantation* in the original MS.

hereafter*] unto, or be in the Possession of His Majestie His Heires and Successors in Asia Africa or America (Tangier onely excepted) but what shall be bona fide and without fraude laden and shipped in England Wales [and†] the Towne of Berwicke upon Tweede and in English built Shipping; or which were bona fide bought before the first day of October One thousand six hundred sixtie and two and had such Certificate thereof as is directed in one Act passed the last Sessions of this present Parliament entituled An Act for preventing Frauds and regulating Abuses in His Majesties Customes, and whereof the Master and three Fourthes of the Marriners at least are English, and which shall be carryed directly thence to the said Lands Islands Plantations Colonyes Territories or Places, and from noe other place or places whatsoever Any Law Statute or Usage to the contrary notwithstanding, under the Penaltie of the losse of all such Commodities of the Growth Production or Manufacture of Europe as shall be imported into any of them from any other Place whatsoever by Land or Water, and if by Water, of the Ship, or Vessell alsoe in which they were imported with all her Guns Tackle Furniture Ammunition and Apparell, one third parte to His Majestie His Heires and Successors, one third part to the Governour of such Land Island Plantation Colony Territory or Place into which such Goods were imported if the said Shipp, Vessell or Goods be there seised, or informed against and sued for, or otherwise that Third part alsoe to His Majestie His Heires and Successors, and the other Third parte to him or them who shall seise inform or sue for the same in any of His Majesties Courts in such of the said Lands Islands Colonies Plantations Territories or Places where the Offence was committed, or in any Court of Record in England by Bill, Information Plaint or other Action wherein noe Essoyne Protection or Wager in Law shall be allowed

[V.] PROVIDED alwayes . . . That it shall and may be lawfull to shipp and lade in such Shipps, and soe navigated as in the foregoeing Clause is sett downe and expressed in any part of Europe Salt for the Fisheries of New England and New found land, and to shipp and lade in the Medera's Wines of the Growth thereof, and to shipp and lade in the Westerne Islands or Azores Wines of the Growth of the said Islands, and to shipp [or‡] take

* *Hereafter belong* in the original MS. † The original MS. has *or*.
‡ *And* in the original MS.

in Servants or Horses in Scotland or Ireland, and to shipp or lade in Scotland all sorts of Victuall of the Growth or Production of Scotland, and to shipp or lade in Ireland all sortes of Victuall of the Growth or Production of Ireland, and the same to transport into any of the said Lands Islands Plantations Colonyes Territories or Places, Any thing in the foregoeing Clause in the contrary in any wise notwithstanding.

[VI.] And for the better prevention of Fraudes Be it enacted and it is hereby enacted That from and after . . . [March 25, 1664] . . . every person or persons importing by land any Goods or Commodities whatsoever into any the said Lands Islands Plantations Colonies Territories or Places shall deliver to the Governour of such Land Island Plantation Colony Territory or Place, or to such Person or Officer as shall be by him thereunto authorized and appointed within fower and twenty hours after such Importation his and their Names and Surnames and a true Inventory and Particular of all such Goods or Commodities, And noe Shipp or Vessell comeing to any such Land Island Plantation Colony Territory or Place shall lade or unlade any Goods or Commodities whatsoever untill the Master or Commander of such Shipp or Vessell shall first have made knowne to the Governour of such Land Isleland Plantation Colony Territory or Place or such other Person or Officer as shall be by him thereunto authorized and appointed the arrivall of the said Shipp or Vessell with her name, and the name and surname of her Master or Commander, and have shewen to him that she is an English built Shipp, or made good by produceing such Certificate as abovesaid that she is a Shipp or Vessell bona fide belonging to England Wales or the Towne of Berwicke and navigated with an English Master and three fourth parts of the Marriners at least Englishmen and have delivered to such Governour or other Person or Officer a true and perfect Inventory or Invoice of her Ladeing together with the place or places in which the said Goods were laden or taken into the said Shipp or Vessell under the paine of the losse of the Shipp or Vessell with all her Guns Ammunition Tackle Furniture and Apparell and of all such Goods of the Growth Production or Manufacture of Europe as were not bona fide laden and taken in, in England Wales or the Towne of Berwicke to be recovered and divided in manner aforesaid, And all such as are Governours or Comanders of any the said Lands Islands Plantations Colonyes

Territoryes or Places (Tangier onely excepted) shall before . . . [March 25, 1664] . . . and all such as shall hereafter be made Governours or Commanders of any of them shall before their entrance upon the execution of such trust or charge take a Solemne Oath before such person or persons as shall be authorized by His Majestie His Heires and Successors to administer the same to doe their utmost within their respective Governments or Commands to cause to be well and truely observed what is in this Act enacted in relation to the Trade of such Lands Islands Plantations Colonyes Territoryes and Places under the penaltie of being removed out of their respective Governments and Commands. And if any of them shall be found after the takeing of such Oath to have wittingly and willingly offended contrary to what is by this Act required of them, that they shall for such Offence be turned out of their Governments, and be incapeable of the Government of any other Land Island Plantation or Colony, and moreover forfeite the summe of One thousand pounds lawfull money of England . . .

[VII.] And it is hereby further enacted That if any Officer of the Customes in England Wales or Towne of Berwicke upon Tweede shall give any Warrant for or suffer any Sugar, Tobaccho, Ginger, Cotton, Wooll, Indico Speckle Wood or Jamaica Wood Fusticke or other Dying Wood of the growth of any of the said Lands Islands Colonyes Plantations Territories or Places to be carryed into any other Country or Place whatsoever untill they have beene first unladen bona fide and putt on shore in some Port or Haven in England or Wales or in the Towne of Berwicke, that every such Officer for such Offence shall forfeite his place and the value of such of the said Goods as he shall give Warrant for or suffer to passe into any other Country or Place. . . .

No. 29. Grant to the Duke of York

March 12/22, 1663/4

The province of New Netherland, granted to the Duke of York, brother of Charles II., in March, 1663/4, was not surrendered to the English until the following August. By the treaty of Breda, in 1667, the English occupation was confirmed. On the renewal of the war between England and the United Netherlands, in March, 1672/3, New York was retaken by the Dutch, and a

general act of confiscation was passed, including in its scope property of the King and of the Duke of York; but the treaty of Westminster, in 1674, providing for a mutual restoration of conquests, reëstablished the English control. To remove any doubt as to the validity of the grant of 1664, and other grants made under it, due to the temporary occupation by the Dutch, a second grant was made June 29/July 9, 1674, in terms only verbally different from the first.

REFERENCES. — *Text* in *Documents relating to the Colonial History of New York*, II., 295–298. On the English conquest, see Brodhead's *History of New York*, II., III.; Sainsbury's *Calendar of State Papers*, Colonial, V. The so-called "Duke of York's Laws," 1676–1682, have been reprinted by the State of Pennsylvania (Harrisburg, 1879), in a volume containing also the charter and early laws of Pennsylvania.

CHARLES the Second, . . . [&c.] . . . Know ye that we . . . by these presents for us Our heirs and Successors Do Give and Grant unto our Dearest Brother James Duke of York his Heirs and Assigns All that part of the maine Land of New England beginning at a certain place called or known by the name of St Croix next adjoining to New Scotland in America and from thence extending along the Sea Coast unto a certain place called Petuaquine or Pemaquid and so up the River thereof to the furthest head of the same as it tendeth Northwards and extending from thence to the River Kinebequi and so Upwards by the Shortest course to the River Canada Northward And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island situate lying and being towards the West of Cape Cod and the Narrow Higansetts abutting upon the main land between the two Rivers there called or known by the several names of Connecticut and Hudsons River together also with the said River called Hudsons River and all the Land from the West side of Connecticut to the East side of Delaware Bay and also all those several Islands called or known by the Names of Martin's Vinyard and Nantukes otherwise Nantuckett. . . . And all our Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand of in or to the said Lands and Premises or any part or parcel thereof And the Reversion and Reversions Remainder and Remainders together with the yearly and other the Rents, Revenues and Profits of all and singular the said Premises and of every part and parcel thereof . . . And the said James Duke of York doth for himself his Heirs and Assigns covenant and promise to yield and render unto us our Heirs and Successors of and for the same yearly and every year

forty Beaver skins when they shall be demanded or within Ninety days after And We do further . . . Grant unto our said Dearest Brother James Duke of York his Heirs, Deputies, Agents, Commissioners and Assigns by these presents full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of us Our Heirs and Successors who may from time to time adventure themselves into any the parts or places aforesaid or that shall or do at any time hereafter inhabit within the same according to such Laws, Orders, Ordinances, Directions and Instruments as by our said Dearest Brother or his Assigns shall be established And in defect thereof in cases of necessity according to the good discretions of his Deputies, Commissioners, Officers or Assigns respectively as well in all causes and matters Capital and Criminal as civil both marine and others So always as the said Statutes Ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the Laws, Statutes & Government of this Our Realm of England And saving and reserving to us our Heirs and Successors the receiving, hearing and determining of the Appeal and Appeals of all or any Person or Persons of in or belonging to the territories or Islands aforesaid in or touching any Judgment or Sentence to be there made or given And further that it shall and may be lawful to and for our said Dearest Brother his Heirs and Assigns by these presents from time to time to nominate, make, constitute, ordain and confirm by such name or names stile or stiles as to him or them shall seem good and likewise to revoke, discharge, change and alter as well all and singular Governors, Officers and Ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and Islands And also to make, ordain and establish all manner of Orders, Laws, directions, instructions, forms and Ceremonies of Government and Magistracy fit and necessary for and Concerning the Government of the territories and Islands aforesaid so always as the same be not contrary to the laws and statutes of this Our Realm of England but as near as may be agreeable thereunto . . . And We do further . . . Grant . . . That it shall and may be lawful to and for the said James Duke of York his heirs and Assigns in his or their discretions from time to time to admit such and so many Person and Persons to trade and traffic unto and within the Territories and Islands aforesaid and into every

or any part and parcel thereof and to have possess and enjoy any Lands or Hereditaments in the parts and places aforesaid as they shall think fit according to the Laws, Orders, Constitutions and Ordinances by Our said Brother his Heirs, Deputies, Commissioners and Assigns from time to time to be made and established by virtue of and according to the true intent and meaning of these presents and under such conditions, reservations and agreements as Our said Brother his Heirs or Assigns shall set down, order, direct and appoint and not otherwise as aforesaid. . . .

No. 30. Grant of New Jersey to Berkeley and Carteret

June 20/30, 1664

THE grant of New Jersey to Lord Berkeley and Sir George Carteret, like the grant from Charles II. to the Duke of York, on which it was based, was made before the grantor was actually in possession of the territory granted. Berkeley and Carteret were already interested as proprietors in the Carolina colony, and were on intimate terms with the Duke of York. For the subsequent history of the grant, see the notes to Nos. 35 and 36, *post*.

REFERENCES. — *Text* in Leaming and Spicer's *Grants, Concessions, and Original Constitutions of New Jersey* (ed. 1881), 8–11.

THIS INDENTURE made the four and twentieth day of June, in the sixteenth year of the reign of our sovereign Lord, CHARLES the Second . . . , Annoq. Domini, 1664. Between His Royal Highness, JAMES Duke of York, and Albany . . . , of the one part: John Lord Berkley, Baron of Stratton, and one of His Majesty's most Honourable Privy Council, and Sir, George Carteret of Saltrum, in the County of Devon, Knight and one of His Majesty's most Honourable Privy Council of the other part: [A recital of the grant of March 12/22, 1663/4, to the Duke of York, follows.] Now this Indenture witnesseth, that his said Royal Highness JAMES Duke of York, for and in consideration of a competent sum of good and lawful money of England to his said Royal Highness JAMES Duke of York in hand paid by the said John Lord Berkley and Sir George Carteret, before the sealing and delivery of these presents, the receipt whereof the said JAMES Duke of York, doth hereby acknowledge, . . . by these presents,

doth grant, bargain, sell, release and confirm unto the said John Lord Berkley and Sir George Carteret, their heirs and assigns for ever, all that tract of land adjacent to New England, and lying and being to the westward of Long Island, and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's river, and hath upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a strait line to Hudson's river in forty-one degrees of latitude; which said tract of land is hereafter to be called by the name or names of New Ceaserea or New Jersey: . . . in as full and ample manner as the same is granted to the said Duke of York by the before-recited Letters Patents; and all the estate, right, title, interest, benefit, advantage, claim and demand of the said JAMES Duke of York, of in or to the said [tract of land] and premises, or any part or parcel thereof . . . : All of which said tract of land and premises were by indenture, bearing date the day before the date hereof, bargain'd and sold by the said JAMES Duke of York, unto the said John Lord Berkley and Sir George Carteret, for the term of one whole year to commence from the first day of May last past, before the date thereof, under the rent of a peper corn, payable as therein is mentioned as by the said deed more plainly may appear: by force and virtue of which said indenture of bargain and sale, and of the statute for transferring of uses into possession, the said John Lord Berkley and Sir George Carteret, are in actual possession of the said tract of land and premises, and enabled to take a grant and release thereof, the said lease being made to that end and purpose, to have and to hold all and singular the said tract of land and premises; with their, and every of their appurtenances, and every part and parcel thereof . . . for ever; yielding and rendering therefore unto the said JAMES Duke of York, his heirs and assigns, for the said tract of land and premises, yearly . . . the sum of twenty nobles of lawful money of England, if the same shall be lawfully demanded at or in the Inner Temple Hall London, at the feast of St. Michael the Arch Angel yearly. . . .

No. 31. New Jersey Concession and Agreement

February 10/20, 1664/5

At the time of the grant of New Jersey to Berkeley and Carteret, there were a few scattered settlements in the region; but the liberal provisions of the "Concession and Agreement" were framed for the settlers who were expected to come, rather than for the small number already there. The first representative assembly was held at Elizabethtown, in May, 1668.

References. — *Text* in Leaming and Spicer's *Grants*, etc. (ed. 1881), 12–26. The early documentary history of New Jersey may be studied in the *New Jersey Archives*, I.; the early laws are in Leaming and Spicer, *op. cit.* See further Winsor's *Narr. and Crit. Hist.*, III., chap. 12; Whitehead's *East Jersey under the Proprietary Government;* Scott's *Influence of the Proprietors in Founding New Jersey*, in Johns Hopkins Univ. *Studies*, III., No. 8.

The Concession and Agreement of the Lords Proprietors of the Province of New Cæsarea, or New Jersey, to and with all and every the Adventurers and all such as shall settle or plant there.

Imprimus. We do consent and agree, that the Governor of the said Province hath power, by the advice of his council, to depute one in his place and authority, in case of death or removal, to continue until our further order, unless we have commissionated one before.

Item. That he hath likewise power to make choice of and to take to him six councellors at least, or twelve at most, or any even number between six and twelve, with whose advice and consent, or with at least three of the six, or four of a greater number (all being summon'd) he is to govern according to the limitations and instructions following, during our pleasure.

[Provision is made for the appointment of a secretary or register, and a surveyor general, the duties of the same being prescribed. All officers of trust, including members of the assembly, are to swear or subscribe allegiance to the King, and faithfulness to the interests of the proprietors and the province.]

Item. That all persons that are or shall become subjects of the King of England, and swear, or subscribe allegiance to the King, and faithfulness to the lords, shall be admitted to plant and become freemen of the said Province, and enjoy the free-

doms and immunities hereafter express'd, until some stop or contradiction be made by us the Lords, or else the Governor, Council and Assembly, which shall be in force until the Lords see cause to the contrary: provided that such stop shall not any ways prejudice the right or continuance of any person that have been receiv'd before such stop or orders come from the General Assembly.

ITEM. That no person qualified as aforesaid within the said Province, at any time shall be any ways molested, punished, disquieted or called in question for any difference in opinion or practice in matter of religious concernments, who do not actually disturb the civil peace of the said Province; but that all and every such person and persons may from time to time, and at all times, freely and fully have and enjoy his and their judgments and consciences in matters of religion throughout the said Province, they behaving themselves peaceably and quietly, and not using this liberty to licentiousness, nor to the civil injury or outward disturbance of others; any law, statute or clause contained, or to be contained, usage or custom of this realm of England, to the contrary thereof in any wise notwithstanding.

ITEM. That no pretence may be taken by our heirs or assigns for or by reason of our right of patronage and power of advowson, granted by his Majesty's Letter's Patents, unto his Royal Highness JAMES Duke of York, and by his said Royal Highness unto us, thereby to infringe the general clause of liberty of conscience, aforementioned: we do hereby grant unto the General Assembly of the said Province, power by act to constitute and appoint such and so many ministers or preachers as they shall think fit, and to establish their maintenance, giving liberty beside to any person or persons to keep and maintain what preachers or ministers they please.

ITEM. That the inhabitants being freemen, or chief agents to others of the Province aforesaid; do as soon as this our commission shall arrive, by virtue of a writ in our names by the Governor to be for the present (until our seal comes) sealed and signed, make choice of twelve deputies or representatives from amongst themselves; who being chosen are to join with the said Governor and council for the making of such laws, ordinances and constitution as shall be necessary for the present good and welfare of the said Province. But so soon as parishes, divisions, tribes and

other distinctions are made, that then the inhabitants or freeholders of the several respective parishes, tribes, divisions and distinctions aforesaid, do by our writts, under our seals, (which we ingage, shall be in due time issued) annually meet on the first day of January, and choose freeholders for each respective division, tribe or parish to be the deputies or representatives of the same: which body of representatives or the major part of them, shall, with the Governor and council aforesaid, be the General Assembly of the said Province, the Governor or his deputy being present, unless they shall wilfully refuse, in which case they may appoint themselves a president, during the absence of the Governor or the deputy Governor.

Which Assembly's are to have Power.

First. To appoint their own time of meeting and to adjourn their sessions from time to time to such times and places as they shall think convenient; as also to ascertain the number of their quorum; provided that such numbers be not less than the third part of the whole, in whom (or more) shall be the full power of the General Assembly.

II. To enact and make all such laws, acts and constitutions as shall be necessary for the well government of the said Province, and them to repeal: provided, that the same be consonant to reason, and as near as may be conveniently agreeable to the laws and customs of his majesty's kingdom of England: *provided also*, that they be not against the interest of us the Lords Proprietors, our heirs or assigns, nor any of those our concessions, especially that they be not repugnant to the article for liberty of conscience abovementioned: which laws so made shall receive publication from the Governor and council (but as the laws of us and our General Assembly) and be in force for the space of one year and no more, unless contradicted by the Lords Proprietors, within which time they are to be presented to us . . . for our ratification; and being confirmed by us, they shall be in continual force till expired by their own limitation, or by act of repeal in like manner to be passed (as aforesaid) and confirmed.

III. By act as aforesaid, to constitute all courts, together with the limits, powers and jurisdictions of the same; as also the several offices and number of officers belonging to each court,

with their respective salaries, fees and perquisites; their appelations and dignities, with the penalties that shall be due to them, for the breach of their several and respective duties and trusts.

IV. By act as aforesaid, to lay equal taxes and assessments, equally to raise moneys or goods upon all lands (excepting the lands of us the Lords Proprietors before settling) or persons within the several precincts, hundreds, parishes, manors, or whatsoever other divisions shall hereafter be made and established in the said Province, as oft as necessity shall require, and in such manner as to them shall seem most equal and easy for the said inhabitants; in order to the better supporting of the publick charge of the said Government, and for the mutual safety, defence and security of the said Province.

V. By act as aforesaid, to erect within the said Province, such and so many manors, with their necessary courts, jurisdictions, freedoms, and privileges, as to them shall seem meet and convenient: As also to divide the said Province into hundreds, parishes, tribes, or such other divisions and districtions, as they shall think fit; and the said divisions to distinguish by what names we shall order or direct; and in default thereof, by such names as they please: As also in the said Province to create and appoint such and so many ports, harbours, creeks, and other places for the convenient lading and unlading of goods and merchandizes, out of ships, boats and other vessels, as shall be expedient; with such jurisdictions, privileges and francheses to such ports, &c. belonging, as they shall judge most conducing to the general good of the said Plantation or Province.

VI. By their enacting . . . to erect, raise and build within the said Province or any part thereof, such and so many forts, fortresses, castles, cities, corporations, boroughs, towns, villages, and other places of strength and defence; and them or any of them, to incorporate with such charters and privileges, as to them shall seem good, and the grant made unto us will permit; [and the same to fortify and furnish.]

[VII. To constitute trained bands, &c., suppress mutiny and rebellion, and wage offensive and defensive war.]

[VIII. To naturalize foreigners.]

[IX. To regulate allotments of land to individuals; such allotments not to exceed the proportions in the proprietary grants.]

[X. The assembly to provide for the support of the government, and for the collection of rents due the proprietors.]

XI. Lastly to enact, constitute and ordain all such other laws, acts and constitutions as shall or may be necessary for the good, prosperity and settlement of the said Province, excepting what by these presents is excepted, and conforming to the limitations herein expressed.

THE GOVERNOR IS WITH HIS COUNCIL BEFORE EXPRESS'D.

First. To see that all courts establish'd by the laws of the General Assembly, and all ministers and officers, civil and military, do and execute their several duties and offices respectively, according to the laws in force; and to punish them for swerving from the laws, or acting contrary to their trust, as the nature of their offences shall require.

II. According to the constitution of the General Assembly, to nominate and commissionate, the several judges, members and officers of courts, whether magistratical or ministerial and all other civil officers, coroners, &c. and their commissions, powers and authority to revoke at pleasure: *provided*, that they appoint none but such as are freeholders . . . , unless the General Assembly consent.

III. According to the constitution of the General Assembly, to appoint courts and officers in cases criminal; and to impower them to inflict penalties upon offenders against any of the laws in force in the said Province, as the said laws shall ordain; whether by fine, imprisonment, banishment, corporal punishment, or to the taking away of member or life itself if there be cause for it.

[IV. To nominate and commission military officers, and direct the training and employment of the troops.]

[V. To grant reprieves, pending the decision of the proprietors.]

[VI. To issue writs for elections to fill vacancies in the assembly.]

VII. To make warrants and seal grants of land. . . .

VIII. To act and do all other things that may conduce to the safety, peace and well-government of the said Province, as they shall see fit; so as they be not contrary to the laws of the said Province.

FOR THE BETTER SECURITY OF THE PROPRIETIES OF ALL THE INHABITANTS.

First. They are not to impose nor suffer to be imposed, any tax, custom, subsidy, tallage, assessment, or any other duty whatsoever upon any colour or pretence, upon the said Province and inhabitants thereof, other than what shall be imposed by the authority and consent of the General Assembly, and then only in manner as aforesaid.

II. They are to take care, that lands quietly held, planted and possessed seven years, after its being duly survey'd by the Surveyor General, or his order, shall not be subject to any review, resurvey or alteration of bounders, on what pretence soever by any of us, or by any officer or minister under us.

III. They are to take care, that no man, if his cattle stray, range or graze on any ground within the said Province, not actually appropriated or set out to particular persons, shall be lyable to pay any trespass for the same, to us, our heirs or executors: *Provided*, that custom of commons be not thereby pretended to, nor any person hindered from taking up, and appropriating any lands so grazed upon: And that no person doth purposely suffer his cattle to graze on such lands.

AND THAT THE PLANTING OF THE SAID PROVINCE MAY BE THE MORE SPEEDILY PROMOTED.

[The five sections under this heading state the different amounts of land granted to the various classes of persons who shall settle in the province prior to January, 1667/8.]

V. . . . *Provided always*, That no person arriving in the said Province, with purpose to settle (they being subjects or naturalized as aforesaid) be denied a grant of such proportions of land as at the time of their arrival there are due to themselves or servants, by concession from us as aforesaid; but have full licence to take up and settle the same, in such order and manner as is granted or prescrib'd . . .

AND THAT THE LANDS MAY BE THE MORE REGULARLY LAID OUT AND ALL PERSONS THE BETTER ASCERTAIN'D OF THEIR TITLE AND POSSESSION.

[Sections I. and II. prescribe the size and division of lots, and the method of recording grants; land so granted to be held in free and common soccage, paying yearly to the proprietors a quit-rent of one-half penny per acre.]

III. ITEM. We do also grant convenient proportions of land for highways and for streets, not exceeding one hundred foot in breadth in cities, towns and vilages, &c. and for churches, forts, wharfs, kays, harbours and for publick houses; and to each parish for the use of their ministers two hundred acres, in such places as the General Assembly shall appoint.

IV. ITEM. The Governor is to take notice, that all such lands laid out for the uses and purposes aforesaid, in the next preceding article, shall be free and exempt from all rents, taxes and other charges and duties whatsoever, payable to us, our heirs or assigns.

V. ITEM. That in laying out lands for cities, towns, vilages, boroughs, or other hamblets, the said lands be divided into seven parts; one seventh part whereof to be by lot laid out for us, and the rest divided to such as shall be willing to build thereon, they paying after the rate of one penny or half-penny per acre (according to the value of the land) yearly to us, as for their other lands as aforesaid; which said lands in cities, towns, &c. is to be assured to each possessor by the same way and instrument as is before mentioned.

VI. ITEM. That all rules relating to the building of each street, or quantity of ground to be allotted to each house within the said respective cities, boroughs and towns, be wholly left by act as aforesaid, to the wisdom and discretion of the General Assembly.

VII. ITEM. That the inhabitants of the said Province have free passage thro' or by any seas, bounds, creeks, rivers or rivelets, &c. in the said Province, thro' or by which they must necessarily pass to come from the main ocean to any part of the Province aforesaid.

VIII. Lastly. It shall be lawful for the representatives of the Freeholders, to make any address to the Lords touching the Gov-

ernor and Council, or any of them, or concerning any grievances whatsoever, or for any other thing they shall desire, without the consent of the Governor and Council, or any of them. . . .

No. 32. Second Charter of Carolina

June 30/July 10, 1665

ALTHOUGH the Heath grant of 1629 had been declared void by an order in council, it had not been judicially annulled; and it was, apparently, to quiet the title to the province, as well as to enlarge the boundaries, that the second Carolina charter was obtained. With the exception of the definition of boundaries, given in the extract following, the provisions of the two charters are similar. The proprietary government under the charter continued, with many vicissitudes, until 1719, when it was overthrown; but the proprietors maintained their ownership until 1729, when the title of seven-eighths of the colony was purchased by the Crown. The proprietor of the remaining one-eighth, Lord Carteret, exchanged his portion in 1743 for a narrow strip of land between 35° 34′ north latitude and the southern boundary of Virginia, which he retained until the Revolution. During most of the proprietary period the northern and southern colonies enjoyed separate governments, although the province was held as a unit; but with the purchase of the proprietary title by the Crown, in 1729, North and South Carolina became separate royal provinces, and so continued until the adoption of State constitutions in 1776.

REFERENCES. — *Text* in *Statutes at Large of South Carolina* (Cooper's ed., 1836), I., 31–40. For general references, see under No. 26, *ante*.

CHARLES the Second, . . . [&c.] . . . WHEREAS, by our Letters Patents, bearing date the twenty-fourth day of March, in the fifteenth year of our reign, We were graciously pleased to grant unto our right trusty and right well-beloved Cousin and Counsellor Edward Earl of Clarendon, our High Chancellor of England . . . [and others] . . . all that province, territory, or tract of ground, called Carolina, situate, lying and being within our dominions of America; extending from the north end of the island called Luke-Island, which lieth in the Southern Virginia seas, and within thirty-six degrees of north latitude; and to the west, as far as the South-Seas; and so respectively as far as the river of Matthias, which bordereth upon the coast of Florida, and within thirty-one degrees of north latitude; and so west, in a direct line, as far as the South-Seas aforesaid.

2d. Now know ye, that we, at the humble request of the said

grantees, in the aforesaid letters patents named, and as a further mark of our especial favour towards them, we are graciously pleased to enlarge our said grant unto them, according to the bounds and limits hereafter specified, and in favour to the pious and noble purpose of the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, all that Province, territory, or tract of ground, scituate, lying and being within our dominions of America aforesaid, extending north and eastward as far as the north end of Charahake river or gulet, upon a streight westerly line to Wyonoake Creek, which lies within or about the degrees of thirty-six, and thirty minutes northern latitude, and so west in a direct line as far as the South-seas; and South and Westward as far as the degrees of twenty-nine inclusive northern latitude, and so west in a direct line, as far as the South Seas; together with all and singular ports, harbours, bays, rivers, and islets, belonging unto the Province or territory aforesaid: . . .

4th. And that the Province or territory hereby granted and described, may be dignified with as large Titles and Priviledges as any other parts of our Dominions and territories in that region, Know ye, that we . . . have thought fit to annex the same tract of ground and territory, unto the same province of Carolina; and out of the fullness of our royal power and prerogative, we do for us, our heirs and successors, annex and unite the same to the said Province of Carolina. . . .

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No. 33. Fundamental Constitutions of Carolina

March 1/11, 1669/70

In January, 1664/5, the proprietors of Carolina executed certain "concessions and agreements" for the government of the colony. In 1669 these were followed by the Fundamental Constitutions, a general frame of government, drawn up by John Locke, then private secretary to Lord Ashley. The first draft of the Fundamental Constitutions, dated July 21/31, 1669, and containing 81 articles, was superseded March 1/11, 1669/70, by a second, in 120 articles. A third set, also in 120 articles, was issued Jan. 12/22, 1681/2; a fourth, in 121 articles, Aug. 17/27, 1682; and a fifth and last, reduced to 41

articles, April 11/21, 1698. The Fundamental Constitutions were early seen to be ill-adapted to the conditions of the colony, and were never adopted by the freemen; but they were never formally abandoned by the proprietors, and remained nominally in force until the revolution of 1719. For fifty years the attempts to give effect to them formed an important ground of dispute between the proprietors and the colonists.

The second form of the Fundamental Constitutions, the one generally cited, is given here. The "rules of precedency," appended to the body of the document, and a few articles of minor importance, are omitted.

REFERENCES. — *Text* in Locke's *Works* (ed. 1823), X., 175–199. On the historical importance of the Constitutions, see especially McCrady's *South Carolina under the Proprietary Government.*

Our sovereign lord the king having, out of his royal grace and bounty, granted unto us the province of Carolina, with all the royalties, properties, jurisdictions, and privileges, of a county palatine, as large and ample as the county palatine of Durham, with other great privileges, for the better settlement of the government of the said place, and establishing the interest of the lords proprietors with equality, and without confusion; and that the government of this province may be made most agreeable to the monarchy under which we live, and of which this province is a part; and that we may avoid erecting a numerous democracy: we, the lords and proprietors of the province aforesaid, have agreed to this following form of government, to be perpetually established amongst us, unto which we do oblige ourselves, our heirs, and successors, in the most binding ways that can be devised.

I. The eldest of the lords proprietors shall be palatine; and, upon the decease of the palatine, the eldest of the seven surviving proprietors shall always succeed him.

II. There shall be seven other chief offices erected, viz. the admiral's, chamberlain's, chancellor's, constable's, chief justice's, high steward's, and treasurer's; which places shall be enjoyed by none but the lords proprietors, to be assigned at first by lot; and upon the vacancy of any one of the seven great offices by death, or otherwise, the eldest proprietor shall have his choice of the said place.

III. The whole province shall be divided into counties; each county shall consist of eight signiories, eight baronies, and four precincts; each precinct shall consist of six colonies.

IV. Each signiory, barony, and colony, shall consist of twelve

thousand acres; the eight signiories being the share of the eight proprietors, and the eight baronies of the nobilities; both which shares, being each of them one fifth part of the whole, are to be perpetually annexed, the one to the proprietors, the other to the hereditary nobility, leaving the colonies, being three fifths, amongst the people: so that in setting out, and planting the lands, the balance of the government may be preserved.

V. At any time before the year one thousand seven hundred and one, any of the lords proprietors shall have power to relinquish, alienate, and dispose to any other person, his proprietorship, and all the signiories, powers, and interest thereunto belonging, wholly and entirely together, and not otherwise. But, after the year one thousand seven hundred, those, who are then lords proprietors, shall not have power to alienate or make over their proprietorship, with the signiories and privileges thereunto belonging, or any part thereof, to any person whatsoever, otherwise than as in § XVIII. but it shall all descend unto their heirs-male; and, for want of heirs-male, it shall all descend on that landgrave, or cassique, of Carolina, who is descended of the next heirs-female of the proprietor; and, for want of such heirs, it shall descend on the next heir-general; and, for want of such heirs, the remaining seven proprietors shall, upon the vacancy, choose a landgrave to succeed the deceased proprietors, who being chosen by the majority of the seven surviving proprietors, he and his heirs, successively, shall be proprietors, as fully to all intents and purposes, as any of the rest.

VI. That the number of eight proprietors may be constantly kept; if, upon the vacancy of any proprietorship, the seven surviving proprietors shall not choose a landgrave to be a proprietor, before the second biennial parliament after the vacancy; then the next biennial parliament but one after such vacancy shall have power to choose any landgrave to be a proprietor.

* * * * * * * * * * *

IX. There shall be just as many landgraves as there are counties, and twice as many cassiques, and no more. These shall be the hereditary nobility of the province, and by right of their dignity be members of parliament. Each landgrave shall have four baronies, and each cassique two baronies, hereditarily and unalterably annexed to, and settled upon the said dignity.

X. The first landgraves and cassiques of the twelve first counties

to be planted, shall be nominated thus; that is to say, of the twelve landgraves, the lords proprietors shall each of them, separately for himself, nominate and choose one; and the remaining four landgraves of the first twelve, shall be nominated and chosen by the palatine's court. In like manner, of the twenty-four first cassiques, each proprietor for himself shall nominate and choose two, and the remaining eight shall be nominated and chosen by the palatine's court; and when the twelve first counties shall be planted, the lords proprietors shall again in the same manner nominate and choose twelve more landgraves, and twenty-four cassiques for the twelve next counties to be planted; that is to say, two-thirds of each number by the single nomination of each proprietor for himself, and the remaining one-third by the joint election of the palatine's court, and so proceed in the same manner till the whole province of Carolina be set out and planted, according to the proportions in these Fundamental Constitutions.

XI. Any landgrave or cassique at any time before the year one thousand seven hundred and one, shall have power to alienate, sell, or make over to any other person, his dignity, with the baronies thereunto belonging, all entirely together. But after the year one thousand seven hundred, no landgrave or cassique shall have power to alienate, sell, make over, or let the hereditary baronies of his dignity, or any part thereof, otherwise than as in § XVIII; they shall all entirely with the dignity thereunto belonging, descend unto his heirs male; and for want of heirs male, all entirely and undivided, to the next heir general; and for want of such heirs, shall devolve into the hands of the lords proprietors.

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XIII. No one person shall have more than one dignity, with the signiories or baronies thereunto belonging. But whensoever it shall happen, that any one, who is already proprietor, landgrave, or cassique, shall have any of these dignities descend to him by inheritance, it shall be at his choice to keep which of the dignities, with the lands annexed, he shall like best; but shall leave the other, with the lands annexed, to be enjoyed by him, who not being his heir apparent, and certain successor to his present dignity, is next of blood.

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XVI. In every signiory, barony, and manor, the respective lord shall have power in his own name to hold court-leet there, for trying of all causes both civil and criminal; but where it shall concern any person being no inhabitant, vassal, or leet-man of the said signiory, barony, or manor, he, upon paying down of forty shillings to the lords proprietors' use, shall have an appeal from the signiory or barony-court to the county-court, and from the manor-court to the precinct-court.

XVII. Every manor shall consist of not less than three thousand acres, and not above twelve thousand acres in one entire piece and colony: but any three thousand acres or more in one piece, and the possession of one man, shall not be a manor, unless it be constituted a manor by the grant of the palatine's court.

XVIII. The lords of signiories and baronies shall have power only of granting estates not exceeding three lives, or thirty-one [*twenty-one*] years, in two-thirds of the said signiories or baronies, and the remaining third shall be always demesne.

XIX. Any lord of a manor may alienate, sell, or dispose to any other person and his heirs forever, his manor, all entirely together, with all the privileges and leet-men thereunto belonging, so far forth as any colony lands; but no grant of any part thereof, either in fee, or for any longer term than three lives, or one-and-twenty years, shall be good against the next heir.

XX. No manor, for want of issue-male, shall be divided amongst coheirs; but the manor, if there be but one, shall all entirely descend to the eldest daughter and her heirs. If there be more manors than one, the eldest daughter first shall have her choice, the second next, and so on, beginning again at the eldest, till all the manors be taken up; that so the privileges, which belong to manors being indivisible, the lands of the manors, to which they are annexed, may be kept entire, and the manor not lose those privileges, which, upon parcelling out to several owners, must necessarily cease.

* * * * * * * * * * *

XXII. In every signiory, barony, and manor, all the leet-men shall be under the jurisdiction of the respective lords of the said signiory, barony, or manor, without appeal from him. Nor shall any leet-man, or leet-woman, have liberty to go off from the land of their particular lord, and live any where else, without licence obtained from their said lord, under hand and seal.

XXIII. All the children of leet-men shall be leet-men, and so to all generations.

* * * * * * * * * * *

XXV. Whoever shall voluntarily enter himself a leet-man, in the registry of the county-court, shall be a leet-man.

XXVI. Whoever is lord of leet-men, shall upon the marriage of a leet-man, or leet-woman of his, give them ten acres of land for their lives; they paying to him therefore not more than one-eighth part of all the yearly produce and growth of the said ten acres.

XXVII. No landgrave or cassique shall be tried for any criminal cause, in any but the chief-justice's court, and that by a jury of his peers.

XXVIII. There shall be eight supreme courts. The first called the palatine's court, consisting of the palatine, and the other seven proprietors. The other seven courts of the other seven great officers, shall consist each of them of a proprietor, and six counsellors added to him. Under each of these latter seven courts, shall be a college of twelve assistants. The twelve assistants of the several colleges shall be chosen, two out of the landgraves, cassiques, or eldest sons of the proprietors, by the palatine's court; two out of the landgraves, by the landgraves' chamber; two out of the cassiques, by the cassiques' chamber; four more of the twelve shall be chosen by the commons' chamber, out of such as have been, or are members of parliament, sheriffs, or justices of the county-court, or the younger sons of proprietors, or eldest sons of landgraves or cassiques; the two other shall be chosen by the palatine's court, out of the same sort of persons, out of which the commons' chamber is to choose.

XXIX. Out of these colleges shall be chosen at first by the palatine's court, six counsellors, to be joined with each proprietor in his court; of which six, one shall be of those, who were chosen into any of the colleges by the palatine's court, out of the landgraves, cassiques, or eldest sons of proprietors; one out of those who were chosen by the landgraves' chamber; and one out of those, who were chosen by the cassiques' chamber; two out of those, who were chosen by the commons' chamber; and one out of those, who were chosen by the palatine's court, out of the proprietors' younger sons, or eldest sons of landgraves, cassiques, or commons, qualified as aforesaid.

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XXXI. No man, being a member of the grand council, or of any of the seven colleges, shall be turned out, but for misdemeanor, of which the grand council shall be judge; and the vacancy of the person so put out shall be filled, not by the election of the grand council, but by those, who first chose him, and out of the same degree he was of, who is expelled. But it is not hereby to be understood, that the grand council hath any power to turn out any one of the lords proprietors or their deputies, the lords proprietors having in themselves an inherent original right.

XXXII. All elections in the parliament, in the several chambers of the parliament, and in the grand council, shall be passed by balloting.

XXXIII. The palatine's court shall consist of the palatine, and seven proprietors, wherein nothing shall be acted without the presence and consent of the palatine or his deputy, and three others of the proprietors or their deputies. This court shall have power to call parliaments, to pardon all offences, to make elections of all officers in the proprietors' dispose, and to nominate and appoint port-towns; and also shall have power, by their order to the treasurer, to dispose of all public treasure, excepting money granted by the parliament, and by them directed to some particular public use; and also shall have a negative upon all acts, orders, votes, and judgments, of the grand council and the parliament, except only as in § VI. and XII. and shall have all the powers granted to the lords proprietors, by their patent from our sovereign lord the king, except in such things as are limited by these Fundamental Constitutions.

XXXIV. The palatine himself, when he in person shall be either in the army, or in any of the proprietors' courts, shall then have the power of general, or of that proprietor, in whose court he is then present; and the proprietor, in whose court the palatine then presides, shall during his presence there be but as one of the council.

XXXV. The chancellor's court, consisting of one of the proprietors, and his six counsellors, who shall be called vice-chancellors, shall have the custody of the seal of the palatine, under which charters of lands or otherwise, commissions and grants of the palatine's court, shall pass. And it shall not be lawful to put the seal of the palatinate [*palatine*] to any writing, which is not signed by the palatinate [*palatine*] or his deputy, and three

other proprietors or their deputies. To this court also belong all state matters, despatches, and treaties with the neighbour Indians. To this court also belong all invasions of the law, of liberty of conscience, and all disturbances of the public peace, upon pretence of religion, as also the licence of printing. The twelve assistants belonging to this court shall be called recorders.

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XXXVII. The chancellor, or his deputy, shall be always speaker in parliament, and president of the grand council; and in his and his deputy's absence, one of his vice-chancellors.

XXXVIII. The chief justice's court, consisting of one of the proprietors and his six counsellors, who shall be called justices of the bench, shall judge all appeals in cases both civil and criminal, except all such cases as shall be under the jurisdiction and cognizance of any other of the proprietors' courts, which shall be tried in those courts respectively. The government and regulation of registries of writings and contracts shall belong to the jurisdiction of this court. The twelve assistants of this court shall be called masters.

XXXIX. The constable's court, consisting of one of the proprietors and his six counsellors, who shall be called marshals, shall order and determine of all military affairs by land, and all land-forces, arms, ammunition, artillery, garrisons and forts, &c. and whatever belongs unto war. His twelve assistants shall be called lieutenant-generals.

XL. In time of actual war, the constable, whilst he is in the army, shall be general of the army; and the six counsellors, or such of them as the palatine's court shall for that time or service appoint, shall be the immediate great officers under him, and the lieutenant-generals next to them.

XLI. The admiral's court, consisting of one of the proprietors, and his six counsellors, called consuls, shall have the care and inspection over all ports, moles, and navigable rivers, so far as the tide flows, and also all the public shipping of Carolina, and stores thereunto belonging, and all maritime affairs. This court also shall have the power of the court of admiralty; and shall have power to constitute judges in port-towns, to try cases belonging to law-merchant, as shall be most convenient for trade. The twelve assistants, belonging to this court, shall be called proconsuls.

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XLIII. The treasurer's court, consisting of a proprietor and his six counsellors, called under-treasurers, shall take care of all matters that concern the public revenue and treasury. The twelve assistants shall be called auditors.

XLIV. The high steward's court, consisting of a proprietor and his six counsellors, called comptrollers, shall have the care of all foreign and domestic trade, manufactures, public buildings, work-houses, highways, passages by water above the flood of the tide, drains, sewers, and banks against inundations, bridges, posts, carriers, fairs, markets, corruption or infection of the common air or water, and all things in order to the public commerce and health; also setting out and surveying of lands; and also setting out and appointing places for towns to be built on in the precincts, and the prescribing and determining the figure and bigness of the said towns, according to such models as the said court shall order; contrary or differing from which models it shall not be lawful for any one to build in any town. This court shall have power also to make any public building, or any new highway, or enlarge any old highway, upon any man's land whatsoever; as also to make cuts, channels, banks, locks, and bridges, for making rivers navigable, or for draining fens, or any other public use. The damage the owner of such lands, (on or through which any such public things shall be made) shall receive thereby, shall be valued, and satisfaction made by such ways as the grand council shall appoint. The twelve assistants, belonging to this court, shall be called surveyors.

XLV. The chamberlain's court, consisting of a proprietor and six counsellors, called vice-chamberlains, shall have the care of all ceremonies, precedency, heraldry, reception of public messengers, pedigrees, the registry of all births, burials, and marriages, legitimation, and all cases concerning matrimony, or arising from it; and shall also have power to regulate all fashions, habits, badges, games, and sports. To this court also it shall belong to convocate the grand council. The twelve assistants belonging to this court shall be called provosts.

XLVI. All causes belonging to, or under the jurisdiction of, any of the proprietors' courts, shall in them respectively be tried, and ultimately determined without any farther appeal.

XLVII. The proprietors' courts shall have a power to mitigate all fines, and suspend all executions in criminal causes, either

before or after sentence, in any of the other inferior courts respectively.

XLVIII. In all debates, hearings, or trials, in any of the proprietors' courts, the twelve assistants belonging to the said courts respectively shall have liberty to be present, but shall not interpose, unless their opinions be required, nor have any vote at all; but their business shall be, by the direction of the respective courts, to prepare such business as shall be committed to them; as also to bear such offices, and despatch such affairs, either where the court is kept, or elsewhere, as the court shall think fit.

XLIX. In all the proprietors' courts, the proprietor, and any three of his counsellors, shall make a quorum; provided always, that for the better despatch of business, it shall be in the power of the palatine's court to direct what sort of causes shall be heard and determined by a quorum of any three.

. L. The grand council shall consist of the palatine and seven proprietors, and the forty-two counsellors of the several proprietors' courts, who shall have power to determine any controversies that may arise between any of the proprietors' courts about their respective jurisdictions, or between the members of the same court about their manner and methods of proceeding; to make peace and war, leagues, treaties, &c. with any of the neighbour Indians; to issue out their general orders to the constable's and admiral's courts, for the raising, disposing, or disbanding the forces, by land or by sea.

LI. The grand council shall prepare all matters to be proposed in parliament. Nor shall any matter whatsoever be proposed in parliament, but what hath first passed the grand council; which, after having been read three several days in the parliament, shall by majority of votes be passed or rejected.

LII. The grand council shall always be judges of all causes and appeals that concern the palatine, or any of the lords proprietors, or any counsellor of any proprietor's court, in any cause, which otherwise should have been tried in the court in which the said counsellor is judge himself.

LIII. The grand council, by their warrants to the treasurer's court, shall dispose of all the money given by the parliament, and by them directed to any particular public use.

LIV. The quorum of the grand council shall be thirteen, whereof a proprietor, or his deputy, shall be always one.

LV. The grand council shall meet the first Tuesday in every month, and as much oftener as either they shall think fit, or they shall be convocated by the chamberlain's court.

LVI. The palatine, or any of the lords proprietors, shall have power, under hand and seal, to be registered in the grand council, to make a deputy, who shall have the same power, to all intents and purposes, as he himself who deputes him; except in confirming acts of parliament, as in § LXXVI., and except also in nominating and choosing landgraves and cassiques, as in § X. All such deputations shall cease and determine at the end of four years, and at any time shall be revocable at the pleasure of the deputator.

LVII. No deputy of any proprietor shall have any power, whilst the deputator is in any part of Carolina, except the proprietor, whose deputy he is, be a minor.

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LIX. The eldest of the lords proprietors, who shall be personally in Carolina, shall of course be the palatine's deputy, and if no proprietor be in Carolina, he shall choose his deputy out of the heirs-apparent of any of the proprietors, if any such be there; and if there be no heir-apparent of any of the lords proprietors above one-and-twenty years old, in Carolina, then he shall choose for deputy any one of the landgraves of the grand council: till he have, by deputation, under hand and seal, chosen any one of the fore-mentioned heirs apparent, or landgraves, to be his deputy, the eldest man of the landgraves, and for want of a landgrave, the eldest man of the cassiques, who shall be personally in Carolina, shall of course be his deputy.

LX. Each proprietor's deputy shall be always one of his own six counsellors respectively; and in case any of the proprietors hath not, in his absence out of Carolina, a deputy, commissioned under his hand and seal, the eldest nobleman of his court shall of course be his deputy.

LXI. In every county there shall be a court, consisting of a sheriff and four justices of the county, for every precinct one. The sheriff shall be an inhabitant of the county, and have at least five hundred acres of freehold within the said county; and the justices shall be inhabitants, and have each of them five hundred acres a-piece freehold within the precinct for which they serve

respectively. These five shall be chosen and commissioned from time to time by the palatine's court.

LXII. For any personal causes exceeding the value of two hundred pounds sterling, or in title of land, or in any criminal cause: either party, upon paying twenty pounds sterling to the lords proprietors' use, shall have liberty of appeal from the county-court unto the respective proprietor's court.

LXIII. In every precinct there shall be a court, consisting of a steward and four justices of the precinct, being inhabitants, and having three hundred acres of freehold within the said precinct, who shall judge all criminal causes, except for treason, murder, and any other offences punishable with death, and except all criminal causes of the nobility; and shall judge also all civil causes whatsoever; and in all personal actions, not exceeding fifty pounds sterling, without appeal; but where the cause shall exceed that value, or concern a title of land, and in all criminal causes, there either party, upon paying five pounds sterling to the lords proprietors' use, shall have liberty of appeal to the county court.

LXIV. No cause shall be twice tried in any one court, upon any reason or pretence whatsoever.

LXV. For treason, murder, and all other offences punishable with death, there shall be a commission, twice a year at least, granted unto one or more members of the grand council, or colleges, who shall come as itinerant judges to the several counties, and, with the sheriff and four justices, shall hold assizes to judge all such causes; but, upon paying of fifty pounds sterling to the lords proprietors' use, there shall be liberty of appeal to the respective proprietor's court.

LXVI. The grand jury at the several assizes shall, upon their oaths, and under their hands and seals, deliver in to their itinerant judges a presentment of such grievances, misdemeanors, exigencies, or defects, which they think necessary for the public good of the country; which presentments shall, by the itinerant judges, at the end of their circuit, be delivered in to the grand council at their next sitting. And whatsoever therein concerns the execution of laws already made, the several proprietors' courts, in the matters belonging to each of them respectively, shall take cognizance of it, and give such order about it as shall be effectual for the due execution of the laws. But whatever

concerns the making of any new law shall be referred to the several respective courts to which that matter belongs, and be by them prepared and brought to the grand council.

LXVII. For terms, there shall be quarterly such a certain number of days, not exceeding one-and-twenty at any one time, as the several respective courts shall appoint. The time for the beginning of the term, in the precinct-court, shall be the first Monday in January, April, July, and October; in the county-court, the first Monday in February, May, August, and November; and in the proprietors' courts, the first Monday in March, June, September, and December.

LXVIII. In the precinct-court no man shall be a juryman under fifty acres of freehold. In the county-court, or at the assizes, no man shall be a grand juryman under three hundred acres of freehold; and no man shall be a petty juryman under two hundred acres of freehold. In the proprietors' courts no man shall be a juryman under five hundred acres of freehold.

LXIX. Every jury shall consist of twelve men; and it shall not be necessary they should all agree, but the verdict shall be according to the consent of the majority.

LXX. It shall be a base and vile thing to plead for money or reward; nor shall any one (except he be a near kinsman, not farther off than cousin-german to the party concerned) be permitted to plead another man's cause, till before the judge, in open court, he hath taken an oath, that he doth not plead for money or reward, nor hath, nor will receive, nor directly, nor indirectly, bargained with the party whose cause he is going to plead, for money or any other reward, for pleading his cause.

LXXI. There shall be a parliament, consisting of the proprietors, or their deputies, the landgraves and cassiques, and one freeholder out of every precinct, to be chosen by the freeholders of the said precinct respectively. They shall sit all together in one room, and have every member one vote.

LXXII. No man shall be chosen a member of parliament who hath less than five hundred acres of freehold within the precinct for which he is chosen; nor shall any have a vote in choosing the said member that hath less than fifty acres of freehold within the said precinct.

LXXIII. A new parliament shall be assembled the first Monday of the month of November every second year, and shall meet and

sit in the town they last sat in, without any summons, unless, by the palatine's court, they be summoned to meet at any other place. And if there shall be any occasion of a parliament in these intervals, it shall be in the power of the palatine's court to assemble them in forty days' notice, and at such time and place as the said court shall think fit; and the palatine's court shall have power to dissolve the said parliament when they shall think fit.

LXXIV. At the opening of every parliament, the first thing that shall be done shall be the reading of these Fundamental Constitutions, which the palatine and proprietors, and the rest of the members then present, shall subscribe. Nor shall any person whatsoever sit or vote in the parliament, till he hath that session subscribed these Fundamental Constitutions, in a book kept for that purpose by the clerk of the parliament.

LXXV. In order to the due election of members for the biennial parliament, it shall be lawful for the freeholders of the respective precincts to meet the first Tuesday in September every two years, in the same town or place that they last met in to choose parliament-men; and there choose those members that are to sit the next November following, unless the steward of the precinct shall, by sufficient notice thirty days before, appoint some other place for their meeting, in order to the election.

LXXVI. No act, or order of parliament, shall be of any force, unless it be ratified in open parliament, during the same session, by the palatine or his deputy, and three more of the lords proprietors, or their deputies; and then not to continue longer in force but until the next biennial parliament, unless, in the mean time, it be ratified under the hands and seals of the palatine himself, and three more of the lords proprietors themselves, and by their order published at the next biennial parliament.

LXXVII. Any proprietor, or his deputy, may enter his protestation against any act of the parliament, before the palatine or his deputy's consent be given as aforesaid; if he shall conceive the said act to be contrary to this establishment, or any of these Fundamental Constitutions of the government. And in such case, after full and free debate, the several estates shall retire into four several chambers: the palatine and proprietors into one; the landgraves into another; the cassiques into another; and those chosen by the precincts into a fourth; and if the major

part of any of the four estates shall vote that the law is not agreeable to this establishment, and these Fundamental Constitutions of the government, then it shall pass no farther, but be as if it had never been proposed.

LXXVIII. The quorum of the parliament shall be one-half of those who are members, and capable of sitting in the house that present session of parliament. The quorum of each of the chambers of parliament shall be one-half of the members of that chamber.

LXXIX. To avoid multiplicity of laws, which by degrees always change the right foundations of the original government, all acts of parliament whatsoever, in whatsoever form passed or enacted, shall at the end of an hundred years after their enacting, respectively cease and determine of themselves, and without any repeal become null and void, as if no such acts or laws had ever been made.

LXXX. Since multiplicity of comments, as well as of laws, have great inconvenience, and serve only to obscure and perplex; all manner of comments and expositions, on any part of these Fundamental Constitutions, or any part of the common or statute law of Carolina, are absolutely prohibited.

LXXXI. There shall be a registry in every precinct, wherein shall be enrolled all deeds, leases, judgments, mortgages, and other conveyances, which may concern any of the land within the said precinct; and all such conveyances, not so entered or registered, shall not be of force against any person or party to the said contract or conveyance.

LXXXII. No man shall be register of any precinct who hath not at least three hundred acres of freehold within the said precinct.

LXXXIII. The freeholders of every precinct shall nominate three men; out of which three, the chief justice's court shall choose and commission one to be register of the said precinct, whilst he shall well behave himself.

LXXXIV. There shall be a registry in every signiory, barony, and colony, wherein shall be recorded all the births, marriages, and deaths, that shall happen within the respective signiories, baronies, and colonies.

LXXXV. No man shall be register of a colony that hath not above fifty acres of freehold within the said colony.

LXXXVI. The time of every one's age, that is born in Carolina, shall be reckoned from the day that his birth is entered in the registry, and not before.

LXXXVII. No marriage shall be lawful, whatever contract and ceremony they have used, till both the parties mutually own it before the register of the place where they were married, and he register it, with the names of the father and mother of each party.

LXXXVIII. No man shall administer to the goods, or have right to them, or enter upon the estate of any person deceased, till his death be registered in the respective registry.

LXXXIX. He that doth not enter, in the respective registry, the birth or death of any person that is born, or dies, in his house or ground, shall pay to the said register one shilling per week for each such neglect, reckoning from the time of each birth, or death, respectively, to the time of registering it.

XC. In like manner the births, marriages, and deaths, of the lords proprietors, landgraves, and cassiques, shall be registered in the chamberlain's court.

XCI. There shall be in every colony one constable, to be chosen annually by the freeholders of the colony; his estate shall be above a hundred acres of freehold within the said colony, and such subordinate officers appointed for his assistance, as the county-court shall find requisite, and shall be established by the said county-court. The election of the subordinate annual officers shall be also in the freeholders of the colony.

XCII. All towns incorporate shall be governed by a mayor, twelve aldermen, and twenty-four of the common-council. The said common-council shall be chosen by the present householders of the said town; the aldermen shall be chosen out of the common-council; and the mayor out of the aldermen, by the palatine's court.

XCIII. It being of great consequence to the plantation, that port-towns should be built and preserved; therefore whosoever shall lade or unlade any commodity at any other place but a port-town, shall forfeit to the lords proprietors, for each tun so laden or unladen, the sum of ten pounds sterling; except only such goods as the palatine's court shall license to be laden or unladen elsewhere.

XCIV. The first port-town upon every river shall be in a colony, and be a port-town forever.

XCV. No man shall be permitted to be a freeman of Carolina, or to have any estate or habitation within it, that doth not acknowledge a God; and that God is publicly and solemnly to be worshipped.

XCVI. [As the country comes to be sufficiently planted and distributed into fit divisions, it shall belong to the parliament to take care for the building of churches, and the public maintenance of divines, to be employed in the exercise of religion, according to the Church of England; which being the only true and orthodox, and the national religion of all the king's dominions, is so also of Carolina; and therefore it alone shall be allowed to receive public maintenance, by grant of parliament.*]

XCVII. But since the natives of that place, who will be concerned in our plantation, are utterly strangers to christianity, whose idolatry, ignorance, or mistake, gives us no right to expel, or use them ill; and those who remove from other parts to plant there, will unavoidably be of different opinions concerning matters of religion, the liberty whereof they will expect to have allowed them, and it will not be reasonable for us on this account to keep them out; that civil peace may be maintained amidst the diversity of opinions, and our agreement and compact with all men may be duly and faithfully observed; the violation whereof, upon what pretence soever, cannot be without great offence to Almighty God, and great scandal to the true religion, which we profess; and also that Jews, heathens, and other dissenters from the purity of the christian religion, may not be scared and kept at a distance from it, but by having an opportunity of acquainting themselves with the truth and reasonableness of its doctrines, and the peaceableness and inoffensiveness of its professors, may by good usage and persuasion, and all those convincing methods of gentleness and meekness, suitable to the rules and design of the gospel, be won over to embrace and unfeignedly receive the truth; therefore any seven or more persons, agreeing in any religion, shall constitute a church or profession, to which they shall give some name, to distinguish it from others.

* The following footnote is appended to this article in Locke's *Works:* "This article was not drawn up by Mr. Locke; but inserted by some of the chief of the proprietors, against his judgment; as Mr. Locke himself informed one of his friends, to whom he presented a copy of these constitutions." *Cf.* McCrady's *Hist. of S. C. under the Prop. Gov.*, 104–106.

XCVIII. The terms of admittance and communion with any church or profession shall be written in a book, and therein be subscribed by all the members of the said church or profession; which book shall be kept by the public register of the precinct wherein they reside.

XCIX. The time of every one's subscription and admittance shall be dated in the said book or religious record.

C. In the terms of communion of every church or profession, these following shall be three; without which no agreement or assembly of men, upon pretence of religion, shall be accounted a church or profession within these rules:

1. "That there is a GOD.

2. "That GOD is publicly to be worshipped.

3. "That it is lawful, and the duty of every man, being thereunto called by those that govern, to bear witness to truth; and that every church or profession shall in their terms of communion set down the external way whereby they witness a truth as in the presence of GOD, whether it be by laying hands on, or kissing the Bible, as in the Church of England, or by holding up the hand, or any other sensible way."

CI. No person above seventeen years of age shall have any benefit or protection of the law, or be capable of any place of profit or honour, who is not a member of some church or profession, having his name recorded in some one, and but one religious record at once.

CII. No person of any other church or profession shall disturb or molest any religious assembly.

CIII. No person whatsoever shall speak any thing in their religious assembly, irreverently or seditiously of the government or governors, or of state-matters.

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CVI. No man shall use any reproachful, reviling, or abusive language, against any religion of any church or profession; that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors and that profession, which otherwise they might be brought to assent to.

CVII. Since charity obliges us to wish well to the souls of all men, and religion ought to alter nothing in any man's civil estate or right, it shall be lawful for slaves, as well as others, to enter

themselves, and be of what church or profession any of them shall think best, and thereof be as fully members as any freeman. But yet no slave shall hereby be exempted from that civil dominion his master hath over him, but be in all other things in the same state and condition he was in before.

CVIII. Assemblies, upon what pretence soever of religion, not observing and performing the abovesaid rules, shall not be esteemed as churches, but unlawful meetings, and be punished as other riots.

CIX. No person whatsoever shall disturb, molest, or persecute another for his speculative opinions in religion, or his way of worship.

CX. Every freeman of Carolina shall have absolute power and authority over his negro slaves, of what opinion or religion soever.

CXI. No cause, whether civil or criminal, of any freeman, shall be tried in any court of judicature, without a jury of his peers.

CXII. No person whatsoever shall hold or claim any land in Carolina by purchase or gift, or otherwise, from the natives or any other whatsoever; but merely from and under the lords proprietors; upon pain of forfeiture of all his estate, moveable or immoveable, and perpetual banishment.

CXIII. Whosoever shall possess any freehold in Carolina, upon what title or grant soever, shall, at the farthest from and after the year one thousand six hundred eighty-nine, pay yearly unto the lords proprietors, for each acre of land, English measure, as much fine silver as is at this present in one English penny, or the value thereof, to be as a chief rent and acknowledgment to the lords proprietors, their heirs and successors for ever. And it shall be lawful for the palatine's court by their officers, at any time, to take a new survey of any man's land, not to out [*oust*] him of any part of his possession, but that by such a survey the just number of acres he possesseth may be known, and the rent thereupon due may be paid by him.

CXIV. All wrecks, mines, minerals, quarries of gems, and precious stones, with pearl-fishing, whale-fishing, and one half of all ambergris, by whomsoever found, shall wholly belong to the lords proprietors.

CXV. All revenues and profits belonging to the lords proprietors, in common, shall be divided into ten parts, whereof the

palatine shall have three, and each proprietor one; but if the palatine shall govern by a deputy, his deputy shall have one of those three-tenths, and the palatine the other two-tenths.

CXVI. All inhabitants and freemen of Carolina above seventeen years of age, and under sixty, shall be bound to bear arms, and serve as soldiers whenever the grand council shall find it necessary.

CXVII. A true copy of these Fundamental Constitutions shall be kept in a great book by the register of every precinct, to be subscribed before the said register. Nor shall any person of what degree or condition soever, above seventeen years old, have any estate or possession in Carolina, or protection or benefit of the law there, who hath not, before a precinct register, subscribed these Fundamental Constitutions in this form:

"I *A. B.* do promise to bear faith and true allegiance to our sovereign lord King Charles the Second, his heirs and successors; and will be true and faithful to the palatine and lords proprietors of Carolina, their heirs and successors; and with my utmost power will defend them, and maintain the government according to this establishment in these Fundamental Constitutions."

CXVIII. Whatsoever alien shall, in this form, before any precinct register, subscribe these Fundamental Constitutions, shall be thereby naturalized.

CXIX. In the same manner shall every person, at his admittance into any office, subscribe these Fundamental Constitutions.

CXX. These Fundamental Constitutions, in number a hundred and twenty, and every part thereof, shall be and remain the sacred and unalterable form and rule of government of Carolina for ever. . . .

No. 34. Third Navigation Act

1672

THE immediate object of the act of 1672 was to prevent the illegal trade in tobacco between the American colonies and the continent of Europe. Tobacco was one of the articles which, by the Navigation Act of 1660, could be exported only to England or to another colony; but the increasing demand for this product, together with the high price which must be paid for such tobacco as had paid customs duty in England, served to encourage smuggling and illicit trade. The distinguishing feature of the act of 1672 is the requirement of a

bond that the "enumerated articles" would be landed in England, and the imposition of specified duties in case of failure of the merchant to comply.

REFERENCES. — *Text* in *Statutes of the Realm*, V., 792, 793. The act is cited as 25 Car. II., c. 7. The regulation of the trade in tobacco was the subject of various acts; these are enumerated and discussed in the works of Channing and Beer, cited under No. 22, *ante*.

AN ACT for the incouragement of the Greeneland and Eastland Trades, and for the better secureing the Plantation Trade.

[V.] AND whereas by one Act passed in this present Parlyament in the twelfth yeare of your Majestyes Raigne entituled An Act for (*) encouragement of Shipping and Navigation, and by severall other Lawes passed since that time it is permitted to shipp, carry, convey and transport Sugar, Tobacco, Cotton-wooll, Indicoe, Ginger, Fusticke and all other Dying wood of the Growth, Production and Manufacture of any of your Majestyes Plantations in America, Asia or Africa from the places of their Growth Production and Manufacture to any other of your Majestyes Plantations in those Parts (Tangier onely excepted) and that without paying of Custome for the same either at ladeing or unladeing of the said Commodityes by meanes whereof the Trade and Navigation in those Commodityes from one Plantation to another is greatly increased, and the Inhabitants of diverse of those Colonies not contenting themselves with being supplyed with those Commodities for their owne use free from all Customes (while the Subjects of this your Kingdome of England have paid great Customes and Impositions for what of them hath beene spent here) but contrary to the expresse Letter of the aforesaid Lawes have brought into diverse parts of Europe great quantities thereof, and doe alsoe [dayly †] vend great quantities thereof to the shipping of other Nations who bring them into diverse parts of Europe to the great hurt and diminution of your Majestyes Customes and of the Trade and Navigation of this your Kingdome; For the prevention thereof . . . bee it enacted . . . That from and after the first day of September which shall bee in the yeare of our Lord One thousand six hundred seaventy and three If any Shipp or Vessell which by Law may trade in any of your Majesties Plantations shall come to any of them to shipp and take on board any of the aforesaid Commodities, and that Bond

* *The* in the original MS. † Interlined in the Roll.

shall not be first given with one sufficient Surety to bring the same to England or Wales or the Towne of Berwicke upon Tweede and to noe other place, and there to unloade and putt the same on shoare (the danger of the Seas onely excepted) that there shall be answered and paid to your Majestie your Heires and Successors for soe much of the said Commodities as shall be laded and putt on board such Shipp or Vessell these following Rates and Dutyes, That is to say

For Sugar White the hundred Weight containing one hundred and twelve pounds five shillings;

And Browne Sugar and Muscavadoes the hundred weight containing one hundred and twelve pounds one shilling [and*] six pence;

For Tobacco the pound one penny;

For Cotton-wooll the pound one halfe-penny;

For Indicoe the pound, two pence;

For Ginger the hundred Weight containing one hundred and twelve pounds one shilling;

For Logwood the hundred Weight containing one hundred and twelve pounds, five pounds,

For Fusticke and all other Dying-wood the hundred Weight containing one hundred and twelve pounds six pence;

And alsoe for every pound of Cacao-nutts one penny, to be leavyed, collected and paid at such places, and to such Collectors and other Officers as shall be appointed in the respective Plantations to collect, leavy and receive the same before the ladeing thereof, and under such Penalties both to the Officers and upon the Goods as for non-payment of, or defrauding his Majestie of his Customes in England.

[VI.] And for the better collection of the severall Rates and Dutyes aforesaid imposed by this Act, Bee it enacted . . . That this whole business shall bee ordered and mannaged, and the severall Dutyes hereby imposed shall be caused to be leavyed by the Commissioners of the Customes in England, now and for the time being by and under the authoritie and directions of the Lord Treasurer of England or Commissioners of the Treasury for the Time being.

* * * * * * * * * * *

* &c in the original.

No. 35. Grant of New Jersey to Carteret

July 29/August 8, 1674

THE territory granted to Berkeley and Carteret by the Duke of York, in 1664 (No. 30), had not been divided. In March, 1673/4, Berkeley conveyed his undivided moiety to John Fenwick, a Quaker, in trust for Edward Bylynge, for £1000. The grant of July, 1674, confirming Carteret's interest in the original grant of 1664, made for the first time a division of New Jersey, and gave to Carteret the eastern portion of the province.

REFERENCES. — *Text* in Leaming and Spicer's *Grants*, etc. (ed. 1881), 46–48.

[The conveyance recites the grant of June 29/July 9, 1674, to the Duke of York, and continues:]

Now this indenture witnesseth, that his said Royal Highness JAMES Duke of York, for and in consideration of a competent sum of good and lawful money of England to his Royal Highness in hand paid by the said Sir George Carteret . . . , by these presents doth grant, bargain, sell, release and confirm unto the said Sir George Carteret, his heirs and assigns for ever, all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's river, and extends southward as far as a certain creek called Barnegatt being about the middle, between Sandy Point and Cape May, and bounded on the west in a strait line from the said creek called Barnegatt, to a certain creek in Delaware river, next adjoining to and below a certain creek in Delaware river called Renkokus Kill, and from thence up the said Delaware river to the northermost branch thereof, which is in forty one degrees and forty minutes of latitude; and on the north, crosseth over thence in a strait line to Hudson's river, in forty one degrees of latitude; which said tract of land is hereafter to be called by the name or names of New Cæserea or New Jersey. . . . .

No. 36. Quintipartite Deed

July 1/11, 1676

SHORTLY after the conveyance to Fenwick, in 1673/4, of Berkeley's undivided moiety of New Jersey (see note to No. 35), a dispute arose between

Fenwick and Byllynge in regard to their respective interests. The matter was referred to the decision of William Penn, who awarded one-tenth to Fenwick and nine-tenths to Byllynge. In February, 1674, Byllynge having failed in business, his share was conveyed to William Penn, Gawen Laurie, and Nicholas Lucas, for the benefit of his creditors. Fenwick's share was leased for one thousand years to John Eldridge and Edmond Warner, who conveyed it to Penn and his associates in order to enable the latter to make a new division of New Jersey with Carteret, the division made by Carteret's grant of 1674 being thought inequitable. By this quintipartite deed, the province was divided into East and West New Jersey, East New Jersey being assigned to Carteret, but with boundaries somewhat different from those laid down in the grant of 1674. The proprietors of West New Jersey, still acting as trustees of Byllynge, reconveyed one-tenth of their share to Eldridge and Warner; and in 1680 this division was confirmed by a new grant of West New Jersey from the Duke of York, in which, however, the governmental rights were reserved to Byllynge and his representatives. Fenwick still asserted rights in the premises, and his efforts to maintain them led to protracted controversy with the proprietors, and with the authorities at New York.

References. — *Text* in Leaming and Spicer's *Grants*, etc. (ed. 1881), 61–72; the same work contains the various deeds and conveyances enumerated above. On the controversy with Fenwick, see Hazard's *Annals of Pennsylvania*, 419 *seq.*; for the documents, see *New Jersey Archives*, I.

[The deed recites the grant of 1664 to the Duke of York, the grant of the same year from the Duke of York to Berkeley and Carteret, the conveyance of March, 1673, from Berkeley to Fenwick, and the agreement of February, 1674, between Fenwick, Byllinge, Penn, Lawry and Lucas, and continues:] *And Whereas* they the said Sir George Carteret, William Penn, Gawn Lawry, Nicholas Lucas and Edward Billinge; have agreed to make a partition between them of the said tract of land, and of the said several and respective premises whereof they now stand so seized as tenants in common as aforesaid, and it hath been agreed between them, that the said Sir George Carteret shall have for his share and part of the said tract of land, and of the said several and respective premises to be holden by him . . . , and to be from henceforth called . . . by the name of East New Jersey, all that easterly part . . . of the said tract of land and premises, lying on the east side and eastward of a strait and direct line drawn thro' the said premises from north to south. . . . And that the said William Penn, Gawn Lawrie, and Nicholas Lucas, shall have their share and part of the said tract of land . . . , to be holden by them . . . in severalty . . . , subject to the same trust for the benefit of the said Edward Billinge, as the said

undivided moiety was subject, and to be from henceforth called . . . by the name of West New Jersey, all that westerly part . . . of the said tract of land and premises, lying on the west side and westward of the aforesaid strait and direct line drawn thro' the said premises from north to south as aforesaid, as is hereafter also particularly described. Now these presents witness, that in pursuance and performance of the said before recited agreement, and for the better perfecting of the said, conditions are agreed to be made as aforesaid; and for and in consideration of five shillings to them the said William Penn, Gawn Lawry, Nicholas Lucas and Edward Billinge in hand paid by the said Sir George Carteret . . . , the said Edward Billinge . . . , William Penn, Gawn Lawry and Nicholas Lucas . . . do . . . convey unto the said Sir George Carteret, his heirs and assigns forever, all that easterly part . . . of the said tract of land and premises so granted and conveyed by his said Royal Highness the said JAMES Duke of York, unto the said John Lord Berkeley and Sir George Carteret as aforesaid, extending eastward and northward along the sea coast and the said river called Hudson's river, from the east side of a certain place or harbour lying on the southern part of the same tract of land, and commonly called or known in a map of the said tract of land, by the name of Little Egg Harbour, to that part of the said river called Hudson's river, which is in forty-one degrees of latitude, being the furthermost part of the said tract of land and premises which is bounded by the said river, and crossing over from thence in a strait line, extending from that part of Hudson's river aforesaid to the northermost branch, or part of the before mentioned river called Delaware river, and to the most northerly point or boundary of the said tract of land and premises, so granted by his said Royal Highness JAMES Duke of York, unto the said Lord Berkeley and Sir George Carteret, now by the consent and agreement of the said parties to these presents, called and agreed to be called the north partition point, and from . . . the said north partition point extending southward by a strait and direct line, drawn from the said north partition southward, thro' the said tract of land, unto the most southardly point of the east side of Little Egg Harbour aforesaid; which said most southardly point . . . is now . . . called and agreed to be from henceforth called, the south partition point: and which said strait and direct line . . . is now by the consent

and agreement of the said parties to these presents, called and agreed to be called, the line of partition, which is the line herein before mentioned to be intended . . . for the dividing and making a partition or separation of the said easterly part . . . from the westerly part . . . of the said tract of land and premises, so conveyed by his said Royal Highness aforesaid, in and by these presents intended to be . . . convey'd by the said Sir George Carteret unto the said William Penn, Gawn Lawry and Nicholas Lucas . . . ; which said easternly part . . . is now . . . called and agreed from henceforth to be called, by the name of East New Jersey; . . . [And in further performance of the before-mentioned agreement, and in consideration of a like sum of five shillings,] the said Sir George Carteret . . . doth by these presents . . . convey unto the said William Penn, Gawn Lawry, and Nicholas Lucas, and to their heirs and assigns forever, all that westerly part . . . of the said tract of land and premises so granted by his said Royal Highness, the said JAMES Duke of York, unto the said John Lord Berkley and Sir George Carteret, as aforesaid; and which said westerly part . . . is . . . extending southward and westward, and northward along the sea coast, and the before mentioned bay and river commonly called and known by the name or names of Delaware bay and Delaware river, from the said south partition point before mentioned . . . , unto the said north partition point . . . ; and from . . . the said north partition point, extending southward unto the said south partition point, . . . by the said before mentioned strait and direct line called the line of partition . . . ; all which said westerly part . . . [is] called and agreed from henceforth to be called by the name of West Jersey. . . .

No. 37. Concessions and Agreements of West New Jersey

March 3/13, 1676/7

THE Concessions and Agreements of West New Jersey, signed by 151 of the proprietors, freeholders, and inhabitants, were probably in large part the work of William Penn, and are interesting, aside from their liberal provisions, as the earliest example of Quaker legislation in America.

REFERENCES. — *Text* in Leaming and Spicer's *Grants*, etc. (ed. 1881), 382–411. The laws passed in West New Jersey, 1681–1701, are in *ib.*, 423–587.

THE CONCESSIONS AND AGREEMENTS OF THE PROPRIETORS, FREEHOLDERS AND INHABITANTS OF THE PROVINCE OF WEST NEW JERSEY, IN AMERICA.

[Chapters I.–III. provide for the appointment of commissioners to administer the affairs of the province until the meeting of a general assembly. Chapters IV.–XII. contain provisions regarding the allotment, survey, registration, and possession of land, quit-rents, taxation, etc., similar to those in the Concessions of 1665 (No. 31).]

CHAPTER XIII. *That these following Concessions are the Common Law, or Fundamental Rights, of the Province of West New Jersey.*

That the common law or fundamental rights and privileges of West New Jersey, are individually agreed upon by the Proprietors and freeholders thereof, to be the foundation of the government, which is not to be altered by the Legislative authority, or free Assembly hereafter mentioned and constituted, but that the said Legislative authority is constituted according to these fundamentals, to make such laws as agree with, and maintain the said fundamentals, and to make no laws that in the least contradict, differ or vary from the said fundamentals, under what pretence or alligation soever.

CHAPTER XIV. BUT if it so happen that any person or persons of the said General Assembly, shall therein designedly, willfully, and maliciously, move or excite any to move, any matter or thing whatsoever, that contradicts or any ways subverts, any fundamentals of the said laws in the Constitution of the government of this Province, it being proved by seven honest and reputable persons, he or they shall be proceeded against as traitors to the said government.

CHAPTER XV. THAT these Concessions, law or great charter of fundamentals, be recorded in a fair table, in the Assembly House, and that they be read at the beginning and dissolving of every general free Assembly: And it is further agreed and ordained, that the said Concessions . . . be writ in fair tables, in every common hall of justice within this Province, and that they be

read in solemn manner four times every year, in the presence of the people, by the chief magistrates of those places.

[Chapter XVI. guarantees full liberty of religious faith and worship.]

Chapter XVII. That no Proprietor, freeholder or inhabitant of the said Province of West New Jersey, shall be deprived or condemned of life, limb, liberty, estate, property or any ways hurt in his or their privileges, freedoms or franchises, upon any account whatsoever, without a due tryal, and judgment passed by twelve good and lawful men of his neighbourhood first had: And that in all causes to be tryed, and in all tryals, the person or persons, arraigned may except against any of the said neighbourhood, without any reason rendered, (not exceeding thirty five) and in case of any valid reason alleged, against every person nominated for that service.

Chapter XVIII. And that no Proprietor, freeholder, freedenison, or inhabitant in the said Province, shall be attached, arrested, or imprisoned, for or by reason of any debt, duty, or thing whatsoever (cases felonious, criminal and treasonable excepted) before he or she have personal summon or summons, left at his or her last dwelling place, if in the said Province, by some legal authorized officer, constituted and appointed for that purpose, to appear in some court of judicature for the said Province, with a full and plain account of the cause or thing in demand, as also the name or names of the person or persons at whose suit, and the court where he is to appear, and that he hath at least fourteen days time to appear and answer the said suit, if he or she live or inhabit within forty miles English of the said court, and if at a further distance, to have for every twenty miles, two days time more, for his and their appearance, and so proportionably for a larger distance of place.

That upon the recording of the summons, and non appearance of such person and persons, a writ or attachment shall or may be issued out to arrest, or attach the person or persons of such defaulters, to cause his or their appearance in such court, returnable at a day certain, to answer the penalty or penalties, in such suit or suits; and if he or they shall be condemned by legal tryal and judgment, the penalty or penalties shall be paid and satisfied out of his or their real or personal estate so condemned, or cause the person or persons so condemned, to lie in execution till

satisfaction of the debt and damages be made. [Provided, that in case the estate be not sufficient to pay the said penalties, the person convicted may, on proof of the fact, be discharged from imprisonment.]

CHAPTER XIX. THAT there shall be in every court, three justices or commissioners, who shall sit with the twelve men of the neighborhood, with them to hear all causes, and to assist the said twelve men . . . in case of law; and that they the said justices shall pronounce such judgment as they shall receive from, and be directed by the said twelve men, in whom only the judgment resides, and not otherwise.

And in case of their neglect and refusal, that then one of the twelve, by consent of the rest, pronounce their own judgment as the justices should have done.

And if any judgment shall be past, in any case civil or criminal, by any other person or persons, or any other way, then [*than*] according to this agreement and appointment, it shall be held null and void, and such person or persons so presuming to give judgment, shall be severely fin'd, and upon complaint made to the General Assembly, by them be declared incapable of any office or trust within this Province.

CHAPTER XX. THAT in all matters and causes, civil and criminal, proof is to be made by the solemn and plain averment, of at least two honest and reputable persons; and in case that any person or persons shall bear false witness, and bring in his or their evidence, contrary to the truth of the matter as shall be made plainly to appear, that then every such person or persons, shall in civil causes, suffer the penalty which would be due to the person or persons he or they bear witness against. And in case any witness or witnesses, on the behalf of any person or persons, indicted in a criminal cause, shall be found to have born false witness for fear, gain, malice or favour, and thereby hinder the due execution of the law, and deprive the suffering person or persons of their due satisfaction, that then and in all other cases of false evidence, such person or persons, shall be first severely fined, and next that he or they shall forever be disabled from being admitted in evidence, or into any publick office, employment, or service within this Province.

[Chapter XXI. provides that prosecutions in criminal cases, except treason, murder and felony, may be dismissed by the complainant at any stage of the proceedings.]

Chapter XXII. That the tryals of all causes, civil and criminal, shall be heard and decided by the virdict or judgment of twelve honest men of the neighbourhood, only to be summoned and presented by the sheriff of that division, or propriety where the fact or trespass is committed; and that no person or persons shall be compelled to fee any attorney or counciller to plead his cause, but that all persons have free liberty to plead his own cause, if he please: And that no person nor persons imprisoned upon any account whatsoever within this Province, shall be obliged to pay any fees to the officer or officers of the said prison, either when committed or discharged.

Chapter XXIII. That in all publick courts of justice for tryals of causes, civil or criminal, any person or persons, inhabitants of the said Province may freely come into, and attend the said courts, and hear and be present, at all or any such tryals as shall be there had or passed, that justice may not be done in a corner nor in any covert manner, being intended and resolved, by the help of the Lord, and by these our Concessions and Fundamentals, that all and every person and persons inhabiting the said Province, shall, as far as in us lies, be free from oppression and slavery.

[Chapter XXIV. provides for the registry of deeds, mortgages, and other muniments of title.]

[Chapter XXV. provides for the trial of cases in which Indians are parties.]

Chapter XXVI. It is agreed when any land[s] is to be taken up for settlements of towns, or otherways, before it be surveyed, the commissioners or the major part of them are to appoint some persons to go to the chief of the natives concerned in that land, so intended to be taken up, to acquaint the natives of their intention, and to give the natives what present they shall agree upon, for their good will or consent, and take a grant of the same in writing, under their hands and seals, or some other publick way used in those parts of the world; which grant is to be registered in the publick register, allowing also the natives (if they please) a copy thereof, and that no person or persons, take up any land, but by order from the commissioners, for the time being.

Chapter XXVII. That no ship master or commander of any ship or vessel, shall receive into his ship or vessel, to carry unto

any other nation, country or plantation, any person or persons whatsoever, without a certificate first had and obtained under the hands and seals of the commissioners, or any two of them, that the said person or persons are clear, and may be taken on board, signifying that the said person or persons names have been put up at three public places of the Province, appointed by the commissioners for that purpose, for the space of three weeks giving notice of his or their intention to transport themselves.

CHAPTER XXVIII. THAT MEN MAY PEACEABLY AND QUIETLY ENJOY THEIR ESTATES.

IT is agreed if any person or persons shall steal, rob, or take any goods or chattles, from or belonging to any person or persons whatsoever, he is to make restitution two fold out of his or their estate; and for want of such estate, to be made to work for his theft, for such time and times as the nature of the offence doth require, or until restitution be made double for the same, or as twelve men of the neighbourhood shall determine, being appointed by the commissioners, not extending either to life or limb.

If any person or persons, shall willfully beat, hurt, wound, assault, or otherways abuse the person or persons of any man, woman, or child, they are to be punished according to the nature of the offence, which is to be determined by twelve men of the neighbourhood, appointed by the commissioners.

[Chapter XXIX. relates to the settlement of estates, and the care of orphan children.]

CHAPTER XXX. IN CASE WHEN ANY PERSON OR PERSONS KILL OR DESTROY THEMSELVES, OR BE KILLED BY ANY OTHER THING.

IT is agreed if any man or woman shall wilfully put hand and kill him or herself, the estate of such person or persons, is not to be forfeited, but the kindred, heirs or such other as of right the estate belongs to, may enjoy the same: Or if any beast or ship, boat or other thing, should occasion the death of any person or persons, nevertheless the said beast, ship, boat, or other thing is not to be forfeited, but those to whom they belong may enjoy the same. *Provided always*, that the said beast did not wilfully kill the said person, or hath been known to attempt or addicted to mischief, or hath been found to hurt or kill any person; then the said beast is to be killed.

CHAPTER XXXI. ALL such person or persons as shall be upon tryal found guilty of murder, or treason, the sentence and way of

execution thereof, is left to the General Assembly to determine as they in the wisdom of the Lord shall judge meet and expedient.

The General Assembly and their Power.

Chapter XXXII. That so soon as divisions or tribes, or other such like distinctions are made; that then the inhabitants, freeholders, and Proprietors, resident upon the said Province, or several and respective tribes, or divisions or distinctions aforesaid, do yearly and every year meet on the first day of October, or the eight month, and choose one Proprietor or freeholder for each respective propriety in the said Province, (the said Province being to be divided into one hundred proprieties) to be deputies, trustees, or representatives for the benefit, service and behoof of the people of the said Province: which body of Deputies, trustees or representatives, consisting of one hundred persons, chosen as aforesaid, shall be the general, free and supream assembly of the said Province for the year ensuing and no longer. And in case any member of the said Assembly during the said year, shall decease or otherwise be rendered incapable of that service, that then the inhabitants of the said propriety, shall elect a new member to serve in his room for the remainder of the said year.

Chapter XXXIII. And to the end the respective Members of the Yearly Assembly to be chosen may be regularly and impartially elected.

That no person or persons who shall give, bestow or promise directly or indirectly to the said parties electing, any meat, drink, money or money's worth, for procurement of their choice and consent, shall be capable of being elected a member of the said Assembly. And if any person or persons, shall be at any time corruptly elected, and sufficient proof thereof made to the said Free Assembly, such person or persons . . . shall be reckoned incapable to choose or sit in the said Assembly, or execute any other public office of trust within the said Province, for the space of seven years thence next ensuing. And also that all such elections as aforesaid, be not determined by the common and confused way of cry's and voices, but by putting balls into balloting boxes, to be provided for that purpose, for the prevention of all partiality, and whereby every man may freely choose according to his own judgment, and honest intention.

Chapter XXXIV. To appoint their own times of meeting, and to adjourn their sessions from time to time (within the said year) to such times and places as they shall think fit and convenient, as also to ascertain the number of their quorum, provided such numbers be not less than one half of the whole, in whom (or more) shall be the full power of the General Assembly; and that the votes of two thirds of the said quorum, or more of them if assembled together as aforesaid, shall be determinative in all cases whatsoever coming in question before them, consonant and conformable to these Concessions and fundamentals.

Chapter XXXV. That the said Proprietors and freeholders at their choice of persons to serve them in the General and Free Assembly of the Province, give their respective Deputies or trustees, their instructions at large, to represent their grievances, or for the improvement of the Province: And that the Persons chosen, do by indentures under hand and seal, covenant and oblige themselves to act nothing in that capacity but what shall tend to the fit service and behoof of those that send and employ them; and that in case of failer of trust, or breach of covenant, that they be questioned upon complaint made, in that or the next Assembly, by any of their respective electors.

And that each member of the Assembly chosen as aforesaid, be allowed one shilling per day, during the time of the sitting of the Assembly, that thereby he may be known to be the servant of the people: which allowance . . . is to be paid him by the inhabitants of the propriety or division that shall elect him.

Chapter XXXVI. That in every General Free Assembly, every respective member hath liberty of speech; that no man be interrupted when speaking; that all questions be stated with deliberation and liberty for amendments; that it be put by the chairman, by them to be chosen, and determined by plurality of votes. Also that every member has power of entering his protest and reasons of protestations. And that if any member of such Assembly shall require to have the persons names registered, according to their yea's and no's, that it be accordingly done: And that after debates are past, and the question agreed upon, the doors of the house be set open, and the people have liberty to come in to hear and be witnesses of the votes, and the inclinations of the persons voting.

Chapter XXXVII. And that the said Assembly do elect, con-

stitute and appoint ten honest and able men, to be Commissioners of State, for managing and carrying on the affairs of the said Province, according to the law therein established, during the adjournments and desolutions of the said General free Assembly, for the concervation and tranquility of the same.

Chapter XXXVIII. That it shall be lawful for any person or persons during the session of any General Free Assembly in that Province, to address, remonstrate or declare any suffering, danger or grievance, or to propose, tender or request any privilege, profit, or advantage to the said Province, they not exceeding the number of one hundred persons.

Chapter XXXIX. To enact and make all such laws, acts and constitutions as shall be necessary for the well government of the said Province, (and them to repeal) *provided* that the same be, as near [*as*] may be conveniently, agreeable to the primitive, antient and fundamental laws of the nation of England. *Provided also*, that they be not against any of these our Concessions and fundamentals before or hereafter mentioned.

Chapter XL. By act as aforesaid, to constitute all courts, together with the limits, powers, and jurisdictions of the same, (consonant to these Concessions) as also the several judges, officer and number of officers belonging to each court, to continue such time as they shall see meet, not exceeding one year or two at the most, with their respective sallaries, fees and perquisites, and their appellations, with the penalties that shall be inflicted upon them, for the breach of their several and respective duties and trusts. And that no person or persons whatsoever, inhabitants of the said Province, shall sustain or bear two offices in the said Province, at one and at the same time.

Chapter XLI. That all the justices and constables be chosen by the people and all commissioners of the publick seals, treasuries, and chief justices, embassdors, and collectors be chosen by the General Free Assembly.

Chapter XLII. That the commissioners of the treasury of the said Province, bring in their account at the end of their year, unto the General Free Assembly, there to be seen and adjusted; and that every respective member, carry a copy thereof, unto that hundred of [*or*] propriety he serves, for to be registered in the capital publick court of that propriety.

Chapter XLIII. By act as aforesaid, to lay equal taxes and

assessments, and equally to raise money's or goods, upon all lands or persons, within the several proprieties, precincts, hundreds, tribes, or whatsoever other divisions shall hereafter be made and established in the said Province, as oft as necessity shall require, and in such manner as to them shall seem most equal and easy to the inhabitants, in order to the better supporting of the publick charge of the said government, as also for the publick benefit and advantage of the said people and Province.

Chapter XLIV. By act as aforesaid, to subdivide the said Province into hundreds, proprieties, or such other divisions, and distinctions, as they shall think fit; and the said divisions, to distinguish by such names as shall be thought good; as also within the said Province, to direct and appoint places, for such and so many towns, cities, ports, harbours, creeks, and other places, for the convenient loading and unloaden of goods and merchandize, out of the ships, boats and other vessels, as shall be expedient, with such jurisdictions, privileges and franchises, to such cities, ports, harbours, creeks, or other places, as they shall judge most conducing to the general good of the said Province, and people thereof; and to erect, raise and build within the said Province, or any part thereof, such and so many market towns, and villages, and also appoint such and so many markets, and fairs, and in such place and places as they shall see meet, from time to time, as the grant made and assigned unto the said Proprietors will permit and admitt.

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No. 38. Charter of Pennsylvania

March 4/14, 1680/81

The connection of William Penn with the colonies of East and West New Jersey is referred to elsewhere (see notes to Nos. 36, 37, and 39). Penn inherited from his father, Admiral Penn, a claim of some £16,000 against the King, Charles II. It was to satisfy this claim, as well as to found a colony under Quaker rule, that Penn petitioned, in June, 1680, for a grant of land in America. The petition indicated the extent of the desired grant; but experience had made the colonial authorities in England cautious, and Penn's application, though favored by the King and the Duke of York, was carefully considered. The representatives of the Duke and of Lord Baltimore were consulted, and took a prominent part in the negotiations; but in December the attorney-general reported that the proposed grant did not interfere with

their territorial claims. The boundaries were approved Jan. 15/25, 1680/81, and March 4/14 the charter was issued. The original draft of the charter, drawn up by Penn on the model of the charter of Maryland, was revised by Chief Justice North, and important modifications introduced. A royal proclamation of April 2–12 announced the issuance of the charter, and commanded obedience to its provisions. Penn shortly issued a pamphlet setting forth the advantages of the region, and the conditions of settlement. In August, 1682, he obtained from the Duke of York a quit-claim deed of the territory included in Pennsylvania, and two deeds of feofment, one of Newcastle, with the land within a twelve-mile circuit about it, and the other of the land between Newcastle and Cape Henlopen.

REFERENCES. — *Text* in *Charter and Laws of Pennsylvania* (Harrisburg, 1879), 81–90. An abstract of Penn's proposals is in Hazard's *Annals of Pennsylvania*, 505–513; the deeds from the Duke of York are also in *ib.*, 586–593. For the early documentary history, see *Votes of Assembly*, I.; *Colonial Records*, I.; Hazard's *Pennsylvania Archives*, I. Shepherd's *History of Proprietary Government in Pennsylvania* (Columbia Coll. *Studies*, VI.), is of prime importance; see also Hazard's *Annals*, and Proud's *Pennsylvania*, I.

CHARLES THE SECOND [&c.]. . . . Whereas our Trustie and well beloved Subject, William Penn, Esquire, sonn and heire of Sir William Penn, deceased, out of a commendable desire to enlarge our English Empire, and promote such usefull comodities as may bee of benefitt to us and our Dominions, as alsoe to reduce the Savage Natives by gentle and just manners to the love of civill Societie and Christian Religion hath humbley besought leave of us to transport an ample colonie unto a certaine Countrey hereinafter described in the partes of America not yet cultivated and planted. And hath likewise humbley besought our Royall Majestie to give, grant, and confirme all the said Countrey with certaine priviledges and Jurisdiccons requisite for the good Government and safetie of the said Countrey and Colonie, to him and his heirs forever. Knowe yee, therefore, that wee, favouring the petition and good purpose of the said William Penn, and haveing regard to the memorie and meritts of his late father, in divers services, and perticulerly to his Conduct, courage and discretion under our dearest brother, James, Duke of yorke, in that signall Battell and victorie, fought and obteyned against the Dutch fleete, comanded by the Herr Van Obdam, in the yeare One thousand six hundred sixtie-five, In consideration thereof . . . by this Our present Charter, for us, Our heires and successors, Doe give and grant unto the said William Penn, his heires and assignes All that Tract or parte of land in America, with all

the Islands therein conteyned, as the same is bounded on the East by Delaware River, from twelve miles distance, Northwarde of New Castle Towne unto the three and fortieth degree of Northerne Latitude if the said River doeth extend soe farre Northwards; But if the said River shall not extend soe farre Northward, then by the said River soe farr as it doth extend, and from the head of the said River the Easterne Bounds are to bee determined by a Meridian Line, to bee drawne from the head of the said River unto the said three and fortieth degree, The said lands to extend westwards, five degrees in longitude, to bee computed from the said Eastern Bounds, and the said lands to bee bounded on the North, by the beginning of the three and fortieth degree of Northern latitude, and on the South, by a Circle drawne at twelve miles, distance from New Castle Northwards, and Westwards unto the beginning of the fortieth degree of Northerne Latitude; and then by a streight Line westwards, to the Limitt of Longitude above menconed. Wee Doe also give and grant unto the said William Penn, his heires and assignes, the free and undisturbed use, and continuance in and passage into and out of all and singuler Ports, harbours, Bayes, waters, Rivers, Isles and Inletts, belonging unto or leading to and from the Countrey, or Islands aforesaid; . . . and him the said William Penn, his heires and Assignes, Wee do, by this our Royall Charter . . . make, Create and Constitute the true and absolute Proprietaries of the Countrey aforesaid, and of all other, the premisses, saving alwayes to us . . . the faith and allegiance of the said William Penn, his heirs and assignes, and of all other, the proprietaries, Tenants and Inhabitants that are, or shall be within the Territories and Precincts aforesaid; and Saving also unto us . . . the Sovreignity of the aforesaid Countrey. . . . To bee holden of us, our heires and Successors, Kings of England, as of our Castle of Windsor, in our County of Berks, in free and comon socage by fealty only for all services, and not in Capite or by Knights service, Yeelding and paying therefore . . . two beaver Skins to bee delivered att our said Castle of Windsor, on the first day of Januarie, in every yeare; and also the fifth parte of all Gold and Silver Oare, which shall from time to time happen to be found within the Limitts aforesaid, cleare of all Charges, and . . . wee doe hereby erect the aforesaid Countrey and Islands, into a Province and Seigniorie, and doe call itt Pensilvania . . . ,

And forasmuch as wee have hereby made and ordeyned the aforesaid William Penn, his heires and assignes, the true and absolute Proprietaries of all the Lands and Dominions aforesaid. Know yee therefore, that wee reposing speciall trust and Confidence in the fidelitie, wisdome, Justice, and provident circumspeccon of the said William Penn . . . , Doe grant free, full and absolute power, by vertue of these presents to him and his heires, and to his and their Deputies, and Lieutenants, for the good and happy government of the said Countrey, to ordeyne, make, Enact and under his and their Seales to publish any Lawes whatsoever, for the raising of money for the publick use of the said province, or for any other End apperteyning either unto the publick state, peace, or safety of the said Countrey, or unto the private utility of perticular persons, according unto their best discretions, by and with the advice, assent and approbacon of the freemen of the said Countrey, or the greater parte of them, or of their Delegates or Deputies, whom for the Enacting of the said Lawes, when, and as often as need shall require. Wee will, that the said William Penn, and his heires, shall assemble in such sort and forme as to him and them shall seeme best, and the same Lawes duely to execute unto, and upon all people within the [the] said Countrey and limitts thereof; And wee doe likewise give and grant unto the said William Penn, and his heires, and to his and their Deputies and Lieutenants, such power and authoritie to appoint and establish any Judges, and Justices, Magistrates and Officers whatsoever, for what Causes soever, for the probates of will and for the granting of Administracons within the precincts aforesaid, and with what power soever, and in such forme as to the said William Penn, or his heires, shall seeme most convenient. Alsoe, to remitt, release, pardon and abolish, whether before Judgement or after, all Crimes and Offences, whatsoever comitted within the said Countrey, against the said Lawes, Treason and wilfull and malicious Murder onely excepted; and in those Cases, to Grant Reprieves untill Our pleasure may bee knowne thereon, and to doe all and every other thing and things which unto the compleate establishment of Justice unto Courts and Tribunals, formes of Judicature and manner of proceedings doe belong, altho' in these presents expresse mencon bee not made thereof; . . . Provided, Nevertheles, that the said Lawes bee consonant to reason, and bee not repugnant

or contrarie, but as neare as conveniently may bee agreeable to the Lawes, Statutes and rights of this our Kingdome of England, And Saveing and reserving to us, Our heirs and Successors, the receiving, heareing and determining of the Appeale and Appeales, of all or any person or persons, of, in or belonging to the Territories aforesaid, or touching any Judgement to bee there made or given . . . [In emergencies, the proprietor or his representatives may make ordinances without the consent of the freemen; the same to be agreeable to the laws of England,] and so as the said ordinances be not extended in any sort to bind, charge or take away the right or Interest of any person or persons, for or in their life, members, freehold, goods or Chattells; And our further will and pleasure is, that the Lawes for regulateing and governing of Propertie, within the said Province, as well for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and Chattells, and likewise as to felonies, shall be and continue the same as shall bee for the time being, by the general course of the Law in our Kingdome of England, untill the said Lawes shall be altered by the said William Penn, his heires or assignes, and by the freemen of the said Province, their Delegates or Deputies, or the greater part of them. And to the End the said William Penn, or heires, or other, the Planters, Owners or Inhabitants of the said Province, may not att any time hereafter, by misconstrucon of the powers aforesaid, through inadvertiencie or designe, depart from that faith and due allegiance which by the Lawes of this our Realme of England, they and all our subjects, in our Dominions and Territories, always owe unto us, Our heires and successors, by colour of any extent or largenesse of powers hereby given, or pretended to bee given, or by force or colour of any lawes hereafter to bee made in the said Province, by vertue of any such powers. Our further will and pleasure is, that a transcript or Duplicate of all lawes which shall bee soe as aforesaid, made and published within the said province, shall within five yeares after the makeing thereof, be transmitted and delivered to the privy Councell, for the time being, of us, our heires and successors; And if any of the said Lawes within the space of six months, after that they shall be soe transmitted and delivered, bee declared by us, our heires or successors, in our or their privy Councell, inconsistent with the sovereignety or lawfull prerogative of us, our heirs or successors, or

contrary to the faith and allegiance due by [*to*] the legall Government of this realme, from the said William Penn, or his heires, or of the Planters and Inhabitants of the said province; and that thereupon any of the said Lawes shall bee adjudged and declared to bee void by us, our heirs or successors, under our or their Privy Seale, that then, and from thenceforth such Lawes concerning which such Judgement and declaracon shall be made, shall become voyd, otherwise the said lawes soe transmitted, shall remaine and stand in full force according to the true intent and meaneing thereof. . . . **We Will alsoe**, and by these presents for us, our heires and successors, Wee doe Give and grant licence by this our Charter, unto the said William Penn, his heires and assignes, and to all the inhabitants and dwellers in pvince aforesaid, both present, and to come, to import or unlade by themselves or theire Servants, ffactors or assignes, all merchandizes and goods whatsoever, that shall arise of the fruites and comodities of the said province, either by Land or Sea, into any of the ports of us, our heires and Successors, in our kingdome of England, and not into any other countrey whatsoever. And Wee give him full power to dispose of the said goods in the said ports, and if need bee, within one yeare next after the unladeing of the same, to Lade the said Merchandizes and goodes again into the same or other shipps, and to export the same into any other Countreys, either of our Dominions or fforreigne, according to Lawe: PROVIDED alwayes, that they pay such customes and imposicons, subsidies and duties for the same to us, our heires and successors, as the rest of our subjects of our kingdome of England, for the time being shall be bound to pay, And doe observe the Acts of Navigation and other Lawes in that behalfe made. [Ports and places for lading and unlading to be established by the proprietor;] **Provided**, that the said William Penn and his heires, and the Lieutenants and Governors for the time being, shall admitt and retaine in and about all such ports, havens, Creeks and keyes, all officers and their Deputies, who shall from time to time be appointed for that purpose, by the ffarmers or Commissioners of our customes, for the time being. **And Wee doe** further appoint and ordaine . . . That he the said William penn, his heires and assignes, may from time to time forever, have and enjoy the Customes and Subsidies in the ports, harbours and other Creeks, and places aforesaid, within the pvince afore-

said, payable or due for merchandizes and wares, there to be Laded and unladed, the said Customes and Subsidies to be reasonably assessed, upon any occasion by themselves, and the people there as aforesaid, to be assembled to whom wee Give power, by these presents for us, our heires and Successors, upon just cause, and in a due pporcon, to assesse and impose the same, Saveing unto us, our heires and Successors, such imposicons and customes as by Act of parliament are and shall be appointed; And it is further our will and pleasure, that the said William penn, his heires and assignes, shall from time to time constitute and appoint an Attorney or Agent, to reside in or neare our Citty of London, who shall make knowne the place where he shall dwell or may be found, unto the Clerks of Our privy Counsell, for the time being, or one of them, and shall be ready to appeare in any of our Courtts att Westminster, to Answer for any misdemeanors that shall be comitted, or by any wilfull default or neglect pmitted by the said William penn, his heirs or assignes, against our Lawes of Trade or Navigacon, and after it shall be ascertained in any of the our said Courts, what damages wee or our heires or successors shall have Sustained, by such default or neglect, the said William penn, his heires and assignes, shall pay the same within one yeare after such taxacon and demand thereof, from such Attorney, or in case there shall be noe such Attorney, by the space of one yeare, or such attorney shall not make payment of such damages, within the space of one yeare, and answer such other forfeitures and penalties within the said time, as by the Acts of parliament in England, are or shall be pvided, according to the true intent and meaneing of these presents: Then it shall be lawfull for us, our heiers and Successors, to seize and Resume the government of the said pvince or Countrey, and the same to retain until payment shall be made thereof. But notwithstanding any such Seizure or resumption of the government, nothing concerning the propriety or ownership of any Lands, tenements or other hereditaments, or goods, or chattels of any of the Adventurers, planters or owners, other then the respective offenders there shall be anyway affected or molested thereby: **provided alwayes . . .** that neither the said William penn, nor his heires, nor any other the inh[*ab*]itants of the said pvince, shall at any time hereafter have or maintain any correspondence with any other King, pvince [*prince*] or State, or with

any of their subjects, who shall then be in warr against us, our heires or Successors; Nor shall the said William penn, or his heires, or any other the inhabitants of the said pvince, make warre or doe any act of hostilitie against any other king, prince or State, or any of their Subjects, who shall then be in league or amity with us, our heires or Successors. . . . **And** further . . . **Wee** doe Covenant and grant to and with the said William Penn, and his heires and assignes, That Wee, our heires and Successors, shall att no time hereafter sett or make, or cause to be sett, any impossicon, custome or other taxacon, rate or contribucon whatsoever, in and upon the dwellers and inhabitants of the aforesaid pvince, for their Lands, tenements, goods or chattels, within the said province, or in and upon any goods or merchandize within the said pvince, or to be laden or unladen within the ports or harbours of the said pvince, unles the same be with the consent of the pprietary, or chiefe Governor and assembly, or by Act of parliament in England. . . . **And** our further pleasure is, And Wee doe hereby, for us, our heires and Successors, charge and require that if any of the inhabitants of the said pvince, to the number of Twenty, shall att any time hereafter be desirous, and shall by any writeing or by any pson deputed for them, signify such their desire to the Bishop of London, that any preacher or preachers to be approved of by the said Bishop, may be sent unto them for their instruccon, that then such preacher or preachers, shall and may be and reside within the said pvince, without any deniall or molestacon whatsoever. . . .

No. 39. Grant of East New Jersey

March 14/24, 1682/3

Upon the death of Carteret, in 1680, his interest in East New Jersey passed into the hands of the Earl of Sandwich and others, as trustees, for the benefit of his creditors. Sandwich relinquished his interest, and the others conveyed the province to Thomas Cremer and Thomas Pocock, who in turn sold to Penn and eleven associates, in February, 1681/2. The share of each of the proprietors was then divided, and twelve additional proprietors admitted as tenants in common. In March, 1682/3, the Duke of York executed a release to the twenty-four proprietors. A new frame of government, known as the Fundamental Constitutions, was shortly sent over by the proprietors; but the Assembly objected to it on the ground that it had not been duly enacted, and

was opposed to the Concessions and Agreements of 1665; and it was not put in operation. The patent of East New Jersey was surrendered in 1688, and both provinces, together with New York, were annexed to the New England government under Andros.

REFERENCES. — *Text* in Leaming and Spicer's *Grants*, etc. (ed. 1881), 141–150. The Fundamental Constitutions are in *ib.*, 153–166, and also *New Jersey Archives*, I., 395–410.

[The document recites the grant of 1664 to the Duke of York, the grant of the same year to Berkeley and Carteret, the grant of 1674 to the Duke of York, the grant of the same year to Carteret, the division of the region into East and West New Jersey, and the subsequent transfers by which the share of Carteret passed into the possession of Penn, Barclay, and others, and continues:]

Now these presents witness, that for and in consideration of a competent sum of lawful English money, unto his said Royal Highness in hand paid, and for the better extinguishing all such claims and demands as his said Royal Highness, or his heirs, may any wise have of or in the premises aforesaid, now called East New Jersey, or any part of them, and for the further and better settling and conveying, assuring and confirming of the same, and of every part thereof, according to the purport and true meaning of these presents, his said Royal Highness the said JAMES Duke of York, . . . by these presents, as far as in him lyeth, doth grant, bargain, sell, release and confirm unto the said James, Earl of Perth, John Drummond, Robert Barckly, David Barckly, Robert Gordon, Arent Sonmans, William Penn, Robert West, Thomas Rudyard, Samuel Groome, Thomas Hart, Richard Mew, Ambrose Rigg, John Haywood, Hugh Hartshorn, Clement Plumstead, Thomas Cooper, Gawn Lawry, Edward Byllynge, James Braine, William Gibson, Thomas Barker, Robert Turner and Thomas Warne, their heirs and assigns, all that part, share and portion . . . of all that entire tract of land, and all those entire premisses so granted by his said Royal Highness, unto the said John Lord Berkely and Sir George Carteret, and their heirs, as in and by and upon the said partition was and were vested in the said Sir George Carteret and his heirs, and there agreed to be called by the name of East New Jersey . . . ; and all the estate, right, title, interest, reversion, remainder, claim and demand whatsoever, as well in law as in equity, of his said Royal Highness JAMES, Duke of York, of, in, unto or out of the same,

or any part or parcel of the same: as also the free use of all bays, rivers and waters, leading unto or lying between the said premises, or any of them, in the said parts of East New Jersey, for navigation, free trade, fishing or otherwise, to have and to hold unto the said Earl of Perth . . . [and others] . : . , their heirs and assigns forever . . . , yielding and paying therefor yearly for the said whole entire premisses, unto his Royal Highness . . . , the yearly rent of ten nobles of lawful English money. . . . And these presents further witness, that for the better enabling the said Earl of Perth . . . [and others] . . . to improve and plant the said premisses with people, andto exercise all necessary government there, whereby the said premisses may be the better improved, and made more useful to them . . . and to the King's Majesty, his said Royal Highness . . . doth by these presents give, grant, assign and transfer unto the said Earl of Perth . . . [and others] . . . , all and every such and the same powers, authorities, jurisdictions, governments, and other matters and things whatsoever, which by the said respective recited Letters Patents, or either of them, are or were granted, or intended to be granted, to be exercised by his said Royal Highness, his heirs, assigns, deputies, officers, or agents, in or upon, or in relation unto the said premisses, hereby confirmed . . . , and every of them, in case the same were now in the actual seisen of his Royal Highness. . . .

No. 40. Frame of Government of Pennsylvania

April 25/May 5, 1682

THE first of the frames of government for Pennsylvania was drawn up by Penn and his associates in England. Accompanying the frame was a set of "laws agreed upon in England," to be altered or amended by the freemen. The first assembly met at Upland (Chester) in December, 1682, and adopted a code of laws known as the Great Law. The provincial council was not organized until March, 1683.

REFERENCES. — *Text* in *Charter and Laws of Pennsylvania* (ed. 1879), 93–99. The laws agreed on in England are in Hazard's *Annals of Pennsylvania*, 568–574; the Great Law is in *ib.*, 619–634. On the various frames of government, see especially Shepherd's *History of Proprietary Government*, Part II., chap. 4.

[The frame is prefaced by extended general observations on the origin, nature and end of civil government.]

TO ALL PEOPLE, to whom these presents shall come. WHEREAS king Charles the second, by his letters patent, under the great seal of England; for the consideration therein mentioned, hath been graciously pleased to give and grant unto me William Penn (by the name of William Penn, Esq, son and heir of Sir William Penn, deceased) and to my heirs and assigns forever, all that tract of land or province, called Pensylvania, in America, with divers great powers, preheminences, royalties, jurisdictions, and authorities, necessary for the well-being and government thereof: NOW KNOW YE, that for the well-being and government of the said province, and for the encouragement for [*of*] all the freemen and planters that may be therein concerned, in pursuance of the powers aforementioned, I the said William Penn have declared, granted, and confirmed, and by these presents, for me, my heirs and assigns, do declare, grant and confirm unto all the freemen, planters and adventurers, of, in and to the said province, these liberties, franchises, and properties, to be held, enjoyed and kept by the freemen, planters, and inhabitants of the said province of Pennsylvania for ever.

Imprimis. That the government of this province shall, according to the powers of the patent, consist of the Governor and freemen of the said province, in form of a Provincial Council and General Assembly, by whom all laws shall be made, officers chosen, and publick affairs transacted, as is hereafter respectively declared. That is to say,

Second. That the freemen of the said province shall, on the twentieth day of the twelfth month, which shall be in this present year, one thousand six hundred eighty and two, meet and assemble in some fit place, of which timely notice shall be beforehand given by the governor or his deputy, and then and there shall choose out of themselves seventy-two persons of most note for their wisdom, virtue and ability, who shall meet on the tenth day of the first month next ensuing, and always be called and act as the Provincial Council of the said province.

Third. That at the first choice of such Provincial Council, one-third part of the said Provincial Council shall be chosen to serve for three years next ensuing; one-third part for two years then next ensuing, and one-third part for one year then next

following such election, and no longer; and that the said third part shall go out accordingly. And on the twentieth day of the twelfth month as aforesaid, yearly for ever afterwards, the freemen of the said province shall in like manner meet and assemble together, and then chuse twenty four persons, being one third of the said number, to serve in Provincial Council for three years. It being intended, that one third part of the whole Provincial Council (always consisting and to consist of seventy two persons, as aforesaid) falling off yearly, it shall be yearly supplied by such new yearly elections, as aforesaid; and that no one person shall continue therein longer than three years: and in case any member shall decease before the last election during his time, that then at the next election ensuing his decease, another shall be chosen to supply his place for the remaining time he was to have served, and no longer.

Fourth. That after the first seven years, every one of the said third parts that goeth yearly off, shall be uncapable of being chosen again for one whole year following: that so all may be fitted for government, and have experience of the care and burden of it.

Fifth. That the Provincial Council in all cases of [*and*] matters of moment, as their arguing upon bills to be passed into laws, erecting courts of justice, giving judgment upon criminals impeached, and choice of officers, in such manner as is herein after mentioned; not less than two thirds of the whole Provincial Council shall make a quorum; and that the consent and approbation of two thirds of such quorum shall be had in all such cases and matters of moment. And moreover, that in all cases and matters of lesser moment, twenty-four members of the said Provincial Council shall make a quorum, the majority of which twenty-four shall and may always determine in such cases and causes of lesser moment.

Sixth. That in this Provincial Council, the governor or his deputy shall or may always preside, and have a treble voice; and the said Provincial Council shall always continue, and sit upon its own adjournments and committees.

Seventh. That the governor and Provincial Council shall prepare and propose to the General Assembly hereafter mentioned, all bills which they shall at any time think fit to be passed into laws within the said province; which bills shall be published and

affixed to the most noted places in the inhabited parts thereof thirty days before the meeting of the General Assembly, in order to the passing them into laws or rejecting of them, as the General Assembly shall see meet.

Eighth. That the governor and Provincial Council shall take care that all laws, statutes and ordinances, which shall at any time be made within the said province, be duly and diligently executed.

Ninth. That the governor and Provincial Council shall at all times have the care of the peace and safety of the province, and that nothing be by any person attempted to the subversion of this frame of government.

Tenth. That the governor and Provincial Council shall at all times settle and order the situation of all cities, ports and market towns in every county, modelling therein all public buildings, streets, and market places, and shall appoint all necessary roads and highways in the province.

Eleventh. That the governor and Provincial Council shall at all times have power to inspect the management of the public treasury, and punish those who shall convert any part thereof to any other use, than what hath been agreed upon by the governor, Provincial Council and General Assembly.

Twelfth. That the governor and Provincial Council shall erect and order all publick schools, and encourage and reward the authors of useful sciences and laudable inventions in the said province.

Thirteenth. That for the better management of the powers and trust aforesaid, the Provincial Council shall from time to time divide itself into four distinct and proper committees, for the more easy administration of the affairs of the Province, which divides the seventy-two into four eighteens, every one of which eighteens shall consist of six out of each of the three orders or yearly elections, each of which shall have a distinct portion of business, as followeth: first, a committee of plantations, to situate and settle cities, ports, and market-towns and high-ways, and to hear and decide all suits and controversies relating to plantations. Secondly, a committee of justice and safety, to secure the peace of the province, and punish the male-administration of those who subvert justice to the prejudice of the publick or private interest. Thirdly, a committee of trade and treasury, who shall

regulate all trade and commerce according to law, encourage manufacture and country growth, and defray the publick charge of the province. And fourthly, a committee of manners, education, and arts, that all wicked and scandalous living may be prevented, and that youth may be successively trained up in virtue and useful knowledge and arts: the quorum of each of which committees being six, that is, two out of each of the three orders or yearly elections as aforesaid, making a constant and standing council of twenty-four, which will have the power of the Provincial Council, being the quorum of it, in all cases not excepted in the fifth article; and in the said committees and standing Council of the province, the governor or his deputy shall or may preside as aforesaid; and in the absence of the governor or his deputy, if no one is by either of them appointed, the said committees or Council, shall appoint a president for that time, and not otherwise; and what shall be resolved at such committee shall be reported to the said Council of the province, and shall be by them resolved and confirmed before the same shall be put in execution; and that these respective committees shall not sit at one and the same time, except in cases of necessity.

Fourteenth. And to the end that all laws prepared by the governor and Provincial Council aforesaid, may yet have the more full concurrence of the freemen of the province, it is declared, granted, and confirmed, that at the time and place or places for the choice of a Provincial Council as aforesaid, the said freemen shall yearly choose members to serve in General Assembly as their representatives, not exceeding two hundred persons, who shall yearly meet on the twentieth day of the second month, which shall be in the year one thousand six hundred eighty and three following, in the capital town, or city of the said province, where during eight days the several members may freely confer with one another; and, if any of them see meet, with a committee of the Provincial Council (consisting of three out of each of the four committees aforesaid, being twelve in all) which shall be at that time purposely appointed to receive from any of them proposals for the alteration or amendment of any of the said proposed and promulgated bills; and on the ninth day from their so meeting, the said General Assembly, after reading over the proposed bills by the clerk of the Provincial Council, and the occasions and motives for them being opened by the

governor or his deputy, shall give their affirmative or negative, which to them seemeth best, in such manner as hereinafter is expressed. But not less than two thirds shall make a quorum in the passing of laws, and choice of such officers as are by them to be chosen.

Fifteenth. That the laws so prepared and proposed as aforesaid, that are assented to by the General Assembly, shall be enrolled as laws of the province, with this stile: *By the Governor, with the assent and approbation of the freemen in Provincial Council and General Assembly.*

Sixteenth. That for the establishment of the Government and laws of this province, and to the end there may be an universal satisfaction in the laying of the fundamentals thereof; the General Assembly shall or may for the first year consist of all the freemen of and in the said province, and ever after it shall be yearly chosen, as aforesaid; which number of two hundred shall be enlarged as the country shall increase in people, so as it do not exceed five hundred at any time; the appointment and proportioning of which, as also the laying and methodizing of the choice of the Provincial Council and General Assembly in future times, most equally to the divisions of the hundreds and counties, which the country shall hereafter be divided into; shall be in the power of the Provincial Council to propose, and the General Assembly to resolve.

Seventeenth. That the Governor and the Provincial Council shall erect, from time to time, standing courts of justice in such places and number as they shall judge convenient for the good government of the said province. And that the Provincial Council shall, on the thirteenth day of the first month yearly, elect and present to the governor or his deputy, a double number of persons to serve for judges, treasurers, masters of rolls, within the said province for the year next ensuing; and the freemen of the said province in the county courts, when they shall be erected, and till then in the General Assembly shall, on the three and twentieth day of the second month yearly, elect and present to the governor or his deputy, a double number of persons to serve for sheriffs, justices of the peace, and coroners, for the year next ensuing; out of which respective elections and presentments, the governor or his deputy shall nominate and commissionate the proper number for each office the third day after the said present-

ments; or else the first named in such presentment for each office, shall stand and serve for that office the year ensuing.

Eighteenth. But forasmuch as the present condition of the province requires some immediate settlement, and admits not of so quick a revolution of officers; and to the end the said province may, with all convenient speed, be well ordered and settled, I, William Penn, do therefore think fit, to nominate and appoint such persons for judges, treasurers, masters of the rolls, sheriffs, justices of the peace, and coroners, as are most fitly qualified for those employments; to whom I shall make and grant commissions for the said offices respectively, to hold to them to whom the same shall be granted, for so long time as every such person shall well behave himself in the office or place to him respectively granted, and no longer. And upon the decease or displacing of any of the said officers, the succeeding officer or officers shall be chosen as aforesaid.

Nineteenth. That the General Assembly shall continue so long as may be needful to impeach criminals fit to be there impeached; to pass bills into laws, that they shall think fit to pass into laws, and till such time as the governor and Provincial Council shall declare, that they have nothing further to propose unto them for their assent and approbation; and that declaration shall be a dismiss to the General Assembly for that time, which General Assembly shall be notwithstanding capable of assembling together, upon the summons of the Provincial Council, at any time during that year, if the said Provincial Council shall see occasion for their so assembling.

Twentieth. That all the elections of members or representatives of the people, to serve in Provincial Council and General Assembly, and all questions to be determined by both or either of them, that relate to passing of bills into laws, to the choice of officers, to impeachments made by the General Assembly, and judgment of criminals upon such impeachments by the Provincial Council, and to all other cases by them respectively judged of importance, shall be resolved and determined by the ballot; and, unless on sudden and indispensible occasions, no business in Provincial Council or its respective committees, shall be finally determined the same day that it is moved.

Twenty-first. That at all times, when and so often as it shall happen, that the Governor shall or may be an infant, under the

age of one and twenty years, and no guardians or commissioners are appointed in writing by the father of the said infant, or that such guardians or commissioners shall be deceased; that during such minority, the Provincial Council shall, from time to time, as they shall see meet, constitute and appoint guardians or commissioners, not exceeding three; one of which three shall preside as deputy and chief guardian, during such minority, and shall have and execute, with the consent of the other two, all the power of a governor, in all the public affairs and concerns of the said province.

Twenty-second. That as often as any day of the month, mentioned in any article of this charter, shall fall upon the first day of the week, commonly called the Lord's Day, the business appointed for that day, shall be deferred till next day, unless in case of emergency.

Twenty-third. That no act, law or ordinance whatsoever, shall at any time hereafter be made or done, by the governor of this province, his heirs or assigns, or by the freemen in the Provincial Council or the General Assembly, to alter, change or diminish the form or effect of this charter, or any part or clause thereof, without the consent of the governor, his heirs or assigns, and six parts of seven of the said freemen in Provincial Council, and General Assembly.

And lastly, That I, the said William Penn, for myself, my heirs, and assigns, have solemnly declared, granted and confirmed, and do hereby solemnly declare, grant and confirm, that neither I, my heirs nor assigns, shall procure or do any thing or things, whereby the liberties in this charter contained and expressed, shall be infringed or broken; and if any thing be procured by any person or persons contrary to these premises, it shall be held of no force or effect. . . .

No. 41. Pennsylvania and Delaware Frame

April 2/12, 1683

THE large number of members of the council and assembly prescribed by the Pennsylvania frame of 1682, and the limited legislative power of the assembly, were early felt to constitute serious objections to the instrument. In the election of February, 1683, Penn suggested that, on the petition of the electors, the persons chosen from the several counties should serve, one-fourth

as councillors, and three-fourths as members of the assembly; and this plan, though a violation of the frame, was acquiesced in. In December, 1682, an act of union had incorporated the Delaware settlements, or "lower counties," with Pennsylvania; and an act of settlement, in March, 1683, provided for the reorganization of the council and assembly. The act of settlement, however, was temporary; and in April a new frame of government, drawn up by Penn in accordance with the expressed desire of the reorganized general assembly, was signed. The first assembly under the new frame met at Newcastle, in May, 1684.

REFERENCES. — *Text* in *Charter and Laws of Pennsylvania* (ed. 1879), 155–161. The act of union is in Hazard's *Annals*, 611–614; the act of settlement, *ib.*, 615–619.

[The document recites the grant of the charter of Pennsylvania, and the execution of deeds of feofment by the Duke of York, and continues:]

NOW KNOW YEE, That for the well being and government of the said Province and territories thereunto annexed and for the encouragement of all the freemen and planters that may be therein concerned in pursuance of the rights and powers aforementioned, I the said William Penn, Have Declared, Granted and Confirmed, and by these presents for mee my heirs and assigns, do declare, grant and confirme unto all the freemen, planters and adventurers, of, in and to the said Province and Territories thereof, these Liberties, franchises and properties, so far as in me lieth, to be held, enjoyed and kept by the freemen, planters and adventurers of and in the said Province of Pennsylvania and Territories thereunto annexed for ever.

1st. Imprimis, That the Government of this Province and Territories thereof, shall from time to time according to the powers of the Patent and deeds of feofment aforesaid, Consist of the Proprietarie and Governour and freemen of the said Province and Territories thereof in form of a Provinciall Councill and General Assemblie, which Provinciall Councill shall consist of eighteen persons being three out of each countie, and which Assemblie shall consist of thirty-six persons, being six out of each countie, men of most note for virtue, wisdom and ability, by whom all Laws shall be made, officers chosen and publick affairs transacted, as is hereafter limited and declared.

Second. There being three persons already chosen for every respective countie of this Province and Territories thereof to serve in the Provinciall Council, one of them for three years;

One for two years, and one for one yeare, and one of them being to goe off yearelie in every countie; That on the tenth day of the first month yearly for ever after, the freemen of the said Province and Territories thereof, shall meet together in the most convenient place in everie countie of this Province and Territories thereof, and then and there to choose one person qualified as aforesaid in everie countie, being one-third of the number to serve in Provincial Council for Three years; It being intended that one-third of the whole Provinciall Council, consisting and to consist of eighteen persons, falling off yearlie, It shall be yearlie supplyed by such new yearlie elections as aforesaid; and that no one person shall Continue in Longer than three yeares, and in Case anie member shall decease before the last election during his time, That then aat the next election ensuing his decease, another shall be chosen to supply his place for the Remaining Time he was to have served, and no longer.

Third. That after the first Seven years everie one of the said third parts that goeth yearlie off, shall be uncapable of being chosen again for one whole year following; That so, all that are Capable and Qualified as aforesaid may be fitted for government and have a share of the care and burthen of it.

Fourth. That the Provincial Council in all cases and matters of moment, as their arguing upon bills to be past into laws, or proceedings, about erecting of Courts of Justice, Sitting in judgment upon Criminals impeached, and choice of officers, in such manner as is hereinefter expressed; not Less than two Thirds of the whole shall make a Quorum, and that the consent and approbation of two-thirds of that Quorum shall be had in all such cases or matters of moment: And that in all Cases and Matters of lesser moment one-third of the whole shall make a Quorum, the majoritie of which shall and may always determine in such Cases and Causes of lesser moment.

Fifth. That the Governour and Provinciall Council shall have the power of preparing and proposing to the Assemblie hereafter mentioned, all Bills which they shall see needful, and that shall att anie time be past into Laws within the said Province and Territories thereof, which Bills shall be published and affixed to the most noted place in everie countie of this Province and Territories thereof, Twentie days before the meetting of the Assemblie in order to the passing of the same into Laws.

[Sections 6 to 10, inclusive, are substantially identical with Sections 8 to 12, inclusive, of the frame of 1682.]

Eleventh. That one third part of the Provincial Council Residing with the Governour, shall with the Governour from time to time have the care of the management of all publick affairs, relating to the Peace, Justice, Treasurie, Trade and Improvement of the Province and Territories, and to the good education of the youth and sobrietie of the manners of the inhabitants therein as aforesaid.

Twelfth. That the Governour or his Deputie shall allways preside in the Provinciall Council, and that hee shall att no time therein perform anie publick act of State whatsoever that shall or may relate unto the Justice, Trade, Treasury or Safetie of the Province and Territories aforesaid, but by and with the advice and consent of the Provinciall Council thereof.

Thirteenth. And to the end that all Bills prepared and agreed by the Governour and Provinciall Council as aforesaid, may yet have the more full Concurrence of the freemen of the Province and Territories thereof; It is declared granted and confirmed that att the time and place in everie countie for the choice of one person to serve in Provinciall Council as aforesaid, The respective Members thereof att their said meetting shall yearlie choose outt of themselves six persons of note for virtue, wisdom and abilitie to serve in Assemblie as their Representatives, who shall yearlie meet on the Tenth day of the third month in the capitall towne or citie of the said Province, unless the Governour and Provinciall Councill shall think fitt to appoynt another place to meet in, where during eight dayes, the several members may freelie confer with one another; [the remaining provisions being similar to those in Sec. 14 of the frame of 1682].

[Section 14 corresponds to Sec. 15 of the frame of 1682.]

Fifteenth. And that the representatives of the people in Provinciall Council and Assemblie, May in after ages bear some proportion with the increase and multiplying of the people; The numbers of such representatives of the people may be from time to time increased and enlarged so as at no time the number exceed seventie-two for the Provincial Council and two hundred for the Assembly; The appoyntment and proportioning of which number as also the laying and methodizing of the choice of such representatives in future times most equallie to the division of

the country or number of the inhabitants, is left to the Governour and Provincial Council to propose, and to the Assemblie to resolve; So that the order of rotation be strictlie observed both in choice of the Council and the respective committees thereof, That is to say, one-third to goe off, and come in yearlie.

Sixteenth. That from and after the death of this present Governour, the Provinciall Council shall together with the succeeding Governour erect from time to time standing Courts of Justice in such places and number as they shall judge convenient for the good government of the said Province and territories thereof; And that the provinciall Council shall on the thirteenth day of the second month then next ensuing elect and present to the Governour and [*or*] his deputie a double number of persons to serve for Judges, treasurers and masters of rolls within the said Province and territories, to continue so long as they shall well behave themselves in those capacities respectively. And the freemen of the said Province in Assemblie mett shall on the thirteenth day of the third month yearlie elect and then present to the Governour or his deputie a double number of persons to serve for Sheriffs, Justices of the peace and Coroners for the yeare next ensuing; out of which respective elections and presentments the Governour [*or*] his deputie shall nominate and commissionate the proper number for each office, the third day after the said respective presentments, or else the first named in such presentment for each office as aforesaid shall stand and serve in that office the time before respectively limited; And in case of death or default, such vacancie shall be supplied by the Governour and provincial Council in manner aforesaid.

[Section 17 is substantially identical with Sec. 19 of the frame of 1682.]

Eighteenth. That all the elections of members or representatives of the people, to serve in Provincial Council and Assemblie and all questions to be determined by both or either of them that relate to choice of officers, and all or anie other personall matters shall be resolved or determined by the *Ballot*, and all things relating to the preparing and passing of Bills into Laws, shall be openlie declared and resolved by the vote.

[Sections 19 and 20 correspond to Sections 21 and 22 of the frame of 1682.]

Twenty-first. And for the satisfaction and encouragement of

all aliens, I doe give and grant, that if anie alien who is or shall be a purchaser or who doth or shall inhabit in this Province or territories thereof, shall decease att anie time before he can well be naturalized; His right and interest therein shall notwithstanding descend to his wife and children, or other his relations, Be he testate or intestate, according to the laws of this Province and territories thereof in such cases provided; In as free and ample manner to all intents and purposes, as if the said alien had been naturalized.

Twenty-second. And that the inhabitants of this Province and territories thereof may be accommodated with such food and sustenance as God in his providence hath freelie afforded. I do also further Grant to the inhabitants of this Province and territories thereof, libertie to Fowle and Hunt upon the lands they hold and all other lands therein, not enclosed; and to fish in all waters in the said lands, and in all Rivers and Rivulets, in and belonging to this Province and territories thereof, with Libertie to draw his or their fish on shoare on any man's Lands, So as it be not to the Detriment or annoyance of the owner thereof, Except such lands as doe lye upon inland Rivulets, that are not Boatable, or which are or may be hereafter erected into mannors.

Twenty-third. And that all the inhabitants of this Province and territories thereof, whether purchasers or others may have the last worldlie pledge of my good and kind intentions to them and theirs, I doe Give, Grant and Confirme to all and everie one of them full and quiet enjoyment of their respective lands, To which they have any lawfull or equitable claime, saving onlie such rents and services for the same as are or customarilie ought to be reserved to mee my Heirs or Assigns.

Twenty-fourth. That no Act, Law or Ordinance whatsoever shall att anie Time hereafter be made or done by the Proprietarie and Governour of this Province and territories thereunto belonging, his heirs or assigns, or by the freemen in Provinciall Council or Assemblie, To Alter, Change or Diminish the forme or effect of this Charter or anie part or Clause thereof; or contrary to the true intent and meaning thereof, without the consent of the Proprietarie and Governour his heirs or assigns and Six parts of Seven of the said freemen in provinciall Council and Assemblie mett.*

* * * * * * * * * * *

* The formal endorsements, and the names of the signers, are omitted.

No. 42. Second Charter of Massachusetts

October 7/17, 1691

In April, 1688, Increase Mather was sent to England to urge a restoration of the Massachusetts charter of 1629; and after the flight of James II., and the deposition of Andros, government under the charter was temporarily resumed. In January, 1688/9, Mather learned that "a circular letter was to be sent to all the plantations confirming the existing governments until further orders." He succeeded in stopping the dispatch of the letters intended for New England, and thus prevented the reinstatement of Andros, who was shortly made governor of Virginia. When it became clear that the old charter would not be restored, and that Massachusetts would remain a royal province, Mather and two other representatives of the colony petitioned for a new charter. The petition was favorably received, and the instrument was drafted in consultation with the agents.

References. — *Text* in *Acts and Resolves of the Province of Massachusetts Bay*, I., 1–20. See Doyle's *Puritan Colonies*, II., 352–379; Winsor's *Narr. and Crit. Hist.*, V., 87–91; *Memorial History of Boston*, II., chap. 1. On the vacating of the charter of 1629, see Toppan's *Edward Randolph* (Prince Soc. Publ.), I., II ; the exemplification is in *Mass. Hist. Coll.*, Fourth Series, II., 246–278.

[The charter begins by reciting the grant of a patent in 1620 to the Council for New England, the grant by the Council to the Massachusetts Bay Company in 1628, the royal charter of 1629, and the vacating of the charter by a judgment in chancery in 1684, and continues:]

And Whereas severall persons employed as Agents in behalfe of Our said Collony of the Massachusetts Bay in New England have made their humble application unto Us that Wee would be graciously pleased by Our Royall Charter to Incorporate Our Subjects in Our said Collony and to grant and confirme unto them such powers priviledges and Franchises as [in] Our Royall Wisdome should be thought most conduceing to Our Interest and Service and to the Welfare and happy State of Our Subjects in New England and Wee being graciously pleased to gratifie Our said Subjects And alsoe to the end Our good Subjects within Our Collony of New Plymouth in New England aforesaid may be brought under such a forme of Government as may put them in a better Condition of defence and considering aswell the granting unto them as unto Our Subjects in the said Collony of the Massachusetts Bay Our Royall Charter with reasonable Powers and

Priviledges will much tend not only to the safety but to the Flourishing estate of Our Subjects in the said parts of New England and alsoe to the advanceing of the ends for which the said Plantations were at first encouraged . . . Wee doe by these presents for Us Our Heirs and Successors Will and Ordeyne that the Territories and Collonyes comonly called or known by the Names of the Collony of the Massachusetts Bay and Collony of New Plymouth the Province of Main the Territorie called Accadia or Nova Scotia and all that Tract of Land lying betweene the said Territori*tori*es of Nova Scotia and the said Province of Main be Erected United and Incorporated . . . into one reall Province by the Name of Our Province of the Massachusetts Bay in New England And . . . Wee doe give and grant unto Our good Subjects the Inhabitants of Our said Province or Territory of the Massachusetts Bay and their Successors all that parte of New England in America lying and extending from the greate River commonly called Monomack alias Merrimack on the Northpart and from three Miles Northward of the said River to the Atlantick or Western Sea or Ocean on the South part And all the Lands and Hereditaments whatsoever lying within the limitts aforesaid and extending as farr as the Outermost Points or Promontories of Land called Cape Cod and Cape Mallabar North and South and in Latitude Breadth and in Length and Longitude of and within all the Breadth and Compass aforesaid throughout the Main Land there from the said Atlantick or Western Sea and Ocean on the East parte towards the South Sea or Westward as far as Our Collonyes of Rhode Island Connecticutt and the Marragansett [*Narragansett*] Countrey all alsoe all that part or portion of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass upp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadehock and from the Period of One Hundred and Twenty Miles aforesaid to crosse over Land to the One Hundred and Twenty Miles before reckoned up into the Land from Piscataway Harbour through Newickawannock River and also the North halfe of the Isles and [*of*] Shoales together with the Isles of Cappawock and Nantukett near Cape Cod aforesaid and alsoe [all] Lands and Hereditaments lying

and being in the Countrey and Territory commonly called Accadia or Nova Scotia And all those Lands and Hereditaments lying and extending betweene the said Countrey or Territory of Nova Scotia and the said River of Sagadahock or any part thereof . . . and alsoe all Islands and Isletts lying within tenn Leagues directly opposite to the Main Land within the said bounds . . . Provided neverthelesse . . . that all and every such Lands Tenements and Hereditaments and all other estates which any person or persons or Bodyes Politique or Corporate Townes Villages Colledges or Schooles doe hold and enjoy or ought to hold and enjoy within the bounds aforesaid by or under any Grant or estate duely made or granted by any Generall Court formerly held or by vertue of the Letters Patents herein before recited or by any other lawfull Right or Title whatsoever shall be by . . . [them] . . . for ever hereafter held and enjoyed according to the purport and Intent of such respective Grant under and Subject neverthelesse to the Rents and Services thereby reserved or made payable . . . [saving any claim of Samuel Allen of London, from John Mason, deceased; and provided, further, that no grants or conveyances of said lands or hereditaments to any towns, colleges, schools, or persons shall be voided or prejudiced by reason of defective form.] And Wee doe further . . . Establish and ordeyne that . . . there shall be one Governour One Leiutenant or Deputy Governour and One Secretary of Our said Province or Territory to be from time to time appointed and Commissionated by Us . . . and Eight and Twenty Assistants or Councillors to be advising and assisting to the Governour . . . for the time being as by these presents is hereafter directed and appointed which said Councillors or Assistants are to be Constituted Elected and Chosen in such forme and manner as hereafter in these presents is expressed And for the better Execution of Our Royall Pleasure and Grant in this behalfe Wee . . . Nominate Ordeyne make and Constitute . . . Simon Broadstreet John Richards Nathaniel Saltenstall Wait Winthrop John Phillipps James Russell Samuell Sewall Samuel Appleton Barthilomew Gedney John Hawthorn Elisha Hutchinson Robert Pike Jonathan Curwin John Jolliffe Adam Winthrop Richard Middlecot John Foster Peter Serjeant Joseph Lynd Samuell Hayman Stephen Mason Thomas Hinckley William Bradford John Walley Barnabas Lothrop Job Alcott Samuell Daniell and Silvanus Davis Esquiers the first and present Coun-

cillors or Assistants of Our said Province to continue in their said respective Offices or Trusts . . . untill the last Wednesday in May which shall be in the yeare of Our Lord One Thousand Six Hundred Ninety and Three and untill other Councillors or Assistants shall be chosen and appointed in their stead in such manner as in these presents is expressed And Wee doe further . . . appoint . . . Isaac Addington Esquier to be Our first and present Secretary of Our said Province during Our Pleasure And Our Will and Pleasure is that the Governour . . . shall have Authority from time to time at his discretion to assemble and call together the Councillors or Assistants . . . and that the said Governour with the said Assistants or Councillors or Seaven of them at the least shall and may from time to time hold and keep a Councill for the ordering and directing the Affaires of Our said Province And further Wee Will . . . that there shall . . . be convened . . . by the Governour . . . upon every last Wednesday in the Moneth of May every yeare for ever and at all such other times as the Governour . . . shall think fitt and appoint a great and Generall Court of Assembly Which . . . shall consist of the Governour and Councill or Assistants . . . and of such Freeholders . . . as shall be from time to time elected or deputed by the Major parte of the Freeholders and other Inhabitants of the respective Townes or Places who shall be present at such Elections Each of the said Townes and Places being hereby impowered to Elect and Depute Two Persons and noe more to serve for and represent them respectively in the said Great and Generall Court . . . To which Great and Generall Court . . . Wee doe hereby . . . grant full power and authority from time to time to direct . . . what Number each County Towne and Place shall Elect and Depute to serve for and represent them respectively . . Provided alwayes that noe Freeholder or other Person shall have a Vote in the Election of Members . . . who at the time of such Election shall not have an estate of Freehold in Land within Our said Province or Territory to the value of Forty Shillings per Annum at the least or other estate to the value of Forty * pounds Sterling And that every Person who shall be soe elected shall before he sitt or Act in the said Great and Generall Court . . . take the Oaths mentioned in an Act of Parliament made in the first yeare of Our Reigne Entituled an Act for abrogateing of the Oaths of Alle-

* See note in *Acts and Resolves*, vol. I., p. 393.

giance and Supremacy and appointing other Oaths and thereby appointed to be taken instead of the Oaths of Allegiance and Supremacy and shall make Repeat and Subscribe the Declaration mentioned in the said Act before the Governour and Leiutenant or Deputy Governour or any two of the Assistants for the time being who shall be thereunto authorized and Appointed by Our said Governour and that the Governour for the time being shall have full power and Authority from time to time as he shall Judge necessary to adjourne Prorogue and dissolve all Great and Generall Courts . . . met and convened as aforesaid And . . . Wee doe . . . Ordeyne that yearly once in every yeare . . . the aforesaid Number of Eight and Twenty Councillors or Assistants shall be by the Generall Court . . . newly chosen that is to say Eighteen at least of the Inhabitants of or Proprietors of Lands within the Territory formerly called the Collony of the Massachusetts Bay and four at the least of the Inhabitants of or Proprietors of Lands within the Territory formerly called New Plymouth and three at the least of the Inhabitants of or Proprietors of Land within the Territory formerly called the Province of Main and one at the least of the Inhabitants of or Proprietors of Land within the Territory lying between the River of Sagadahoc and Nova Scotia . . . [The General Court may remove Assistants from office, and may also fill vacancies caused by removal or death.] And Wee doe further Grant and Ordeyne that it shall and may be lawfull for the said Governour with the advice and consent of the Councill or Assistants from time to time to nominate and appoint Judges Commissioners of Oyer and Terminer Sheriffs Provosts Marshalls Justices of the Peace and other Officers to Our Councill and Courts of Justice belonging Provided alwayes that noe such Nomination or Appointment of Officers be made without notice first given or summons yssued out seaven dayes before such Nomination or Appointment unto such of the said Councillors or Assistants as shall be at that time resideing within Our said Province . . . and for the greater Ease and Encouragement of Our Loveing Subjects Inhabiting our said Province . . . and of such as shall come to Inhabit there Wee doe . . . Ordaine that for ever hereafter there shall be a liberty of Conscience allowed in the Worshipp of God to all Christians (Except Papists) Inhabiting . . . within our said Province . . . [Courts for the trial of both civil and criminal cases may be established by the General

Court, reserving to the governor and assistants matters of probate and administration.] And whereas Wee judge it necessary that all our Subjects should have liberty to Appeale to us . . . in Cases that may deserve the same Wee doe . . . Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said Province . . . in any Personall Action wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to us . . . in our . . . Privy Councill Provided such Appeale be made within Fourteen dayes after the Sentence or Judgement given and that before such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by us . . . incase the Judgement or Sentence be affirmed [provided that no execution shall be stayed by reason of such appeal.] And we doe further . . . grant to the said Governor and the great and Generall Court . . . full power and Authority from time to time to make . . . all manner of wholesome and reasonable Orders Laws Statutes and Ordinances Directions and Instructions either with penalties or without (soe as the same be not repugnant or contrary to the Lawes of this our Realme of England) as they shall Judge to be for the good and welfare of our said Province. . . . And for the Government and Ordering thereof and of the People Inhabiting or who shall Inhabit the same and for the necessary support and Defence of the Government thereof [and also] full power and Authority to name and settle Annually all Civill Officers within the said Province such Officers Excepted the Election and Constitution of whome wee have by these presents reserved to us . . . or to the Governor . . . and to Settforth the severall Duties Powers and Lymitts of every such Officer . . . and the forms of such Oathes not repugnant to the Lawes and Statutes of this our Realme of England as shall be respectively Administred unto them for the Execution of their severall Offices and places And alsoe to impose Fines mulcts Imprisonments and other Punishments And to Impose and leavy proportionable and reasonable Assessments Rates and Taxes upon the Estates and Persons of all and every the Proprietors and Inhabitants of our said Province or Territory to be Issued and disposed of by Warrant under the

hand of the Governor . . . with the advice and Consent of the Councill for Our Service in the necessary defence and support of our Government of our said Province . . . and the Protection and Preservation of the Inhabitants there according to such Acts as are or shall be in force within our said Province and to dispose of matters and things . . . Provided alwaies . . . that in the frameing and passing of all such Orders . . . and in all Elections and Acts of Government whatsoever to be passed made or done by the said Generall Court . . . or in Councill the Governor . . . shall have the Negative voice and that without his consent or Approbation signified and declared in Writeing no such Orders . . . Elections or other Acts of Government . . . shall be of any Force effect or validity . . . And wee doe . . . Ordaine that the said Orders Laws Statutes and Ordinances be by the first opportunity after the makeing thereof sent or Transmitted unto us . . . under the Publique Seale to be appointed by us for Our . . . approbation or Disallowance And that incase all or any of them shall at any time within the space of three yeares next after the same shall have been presented to us . . . in Our . . . Privy Councill be disallowed and rejected and soe signified by us . . . under our . . . Signe Manuall and Signett or by or in our . . . Privy Councill unto the Governor for the time being then such . . . of them as shall be soe disallowed . . . shall thenceforth cease and determine and become utterly void and of none effect [Laws, &c., not disallowed within the three years, to remain in force until repealed by the General Court. Grants of land by the General Court, within the limits of the former colonies of Massachusetts Bay and New Plymouth, and the Province of Maine, excepting the region north and east of the Sagadahoc, to be valid without further royal approval. The governor shall direct the defense of the province, and may exercise martial law in case of necessity;] . . . Provided alwayes . . . That the said Governour shall not at any time hereafter by vertue of any power hereby granted or hereafter to be granted to him Transport any of the Inhabitants of Our said Province . . . or oblige them to march out of the Limitts of the same without their Free and voluntary consent or the Consent of the Great and Generall Court . . . nor grant Commissions for exercising the Law Martiall upon any the Inhabitants of Our said Province . . . without the Advice and Consent of the Councill or

Assistants of the same . . . [In case of the death, removal or absence of the governor, the lieutenant-governor may take his place; failing both governor and lieutenant-governor, the council, or the major part of them, are to act.] Provided alwaies . . . that nothing herein shall extend or be taken to . . . allow the Exercise of any Admirall Court Jurisdiction Power or Authority but that the same be and is hereby reserved to Us . . . and shall from time to time be . . . exercised by vertue of Commissions to be yssued under the Great Seale of England or under the Seale of the High Admirall or the Commissioners for executing the Office of High Admirall of England. . . . And lastly for the better provideing and furnishing of Masts for Our Royall Navy Wee doe hereby reserve to Us . . . all Trees of the Diameter of Twenty Four Inches and upwards of Twelve Inches from the ground growing upon any soyle or Tract of Land within Our said Province . . . not heretofore granted to any private persons And Wee doe restraine and forbid all persons whatsoever from felling cutting or destroying any such Trees without the Royall Lycence of Us . . . first had and obteyned upon penalty of Forfeiting One Hundred Pounds sterling unto Ous [Us] . . . for every such Tree so felled cutt or destroyed. . . . .

No. 43. Navigation Act

April 10/20, 1696.

THE Navigation Act of 1672, besides laying duties on certain "enumerated articles," had aimed to provide a more effective system of administration for the colonial customs service; but in the years immediately following the revolution of 1688, the acts of trade, never much regarded in the colonies, were extensively violated. In particular, the lack of a system of registry for English-built ships made the enforcement of the acts difficult, and led to complaints from British merchants of loss of revenue; and it was to supply this lack that the act of 1696 was especially designed. "All further shipping laws were in the nature of detailed regulations, and this act . . . may be said to have added the finishing touch to the colonial system so far as shipping was concerned" (*Channing*).

REFERENCES. — *Text* in *Statutes of the Realm*, VII., 103–107. The act is cited as 7 and 8 Wm. III., c. 22. For general references, see under No. 22, *ante*.

An Act for preventing Frauds and regulating Abuses in the Plantation Trade.

[Recital that notwithstanding 12 Car. II., c. 18, 15 Car. II., c. 7, 22 & 23 Car. II., c. 26, and 25 Car. II., c. 7, great abuses are committed:] For Remedy thereof for the future bee itt enacted . . . That after the Five and twentieth Day of March One thousand six hundred ninety eight noe Goods or Merchandizes whatsoever shall bee imported into or exported out of any Colony or Plantation to His Majesty in Asia Africa or America belonging or in his Possession or which may hereafter belong unto or bee in the Possession of His Majesty His Heires or Successors or shall bee laden in or carried from any One Port or Place in the said Colonies or Plantations to any other Port or Place in the same, the Kingdome of England Dominion of Wales or Towne of Berwick upon Tweed in any Shipp or Bottome but what is or shall bee of the Built of England or of the Built of Ireland or the said Colonies or Plantations and wholly owned by the People thereof or any of them and navigated with the Masters and Three Fourths of the Mariners of the said Places onely (except such Shipps onely as are or shall bee taken Prize and Condemnation thereof made in one of the Courts of Admiralty in England Ireland or the said Colonies or Plantations [to bee navigated by the Master and Three Fourths of the Mariners English or of the said Plantations as aforesaid and whereof the Property doth belong to English Men *] And alsoe except for the space of Three Yeares such Foreigne built Shipps as shall bee employed by the Commissioners of His Majesties Navy for the tyme being or upon Contract with them in bringing onely Masts Timber and other Navall Stores for the Kings Service from His Majesties Colonies or Plantations to this Kingdome to bee navigated as aforesaid and whereof the Property doth belong to English Men) under paine of Forfeiture of Shipp and Goods one third part whereof to bee to the use of His Majesty His Heires and Successors one third part to the Governor of the said Colonies or Plantations and the other third part to the Person who shall informe and sue for the same by Bill Plaint or Information in any of His Majesties Courts of Record att Westminster or in

* Annexed to the original act in a separate schedule.

any Court in His Majesties Plantations where such Offence shall bee committed.

[Sec. II. provides for the exportation and importation, in certain prize ships and ships foreign built, of masts and other naval stores.]

[Sec. III. requires governors or commanders-in-chief of the colonies to take oaths to observe the acts of trade, under penalty of a fine of £1000 and removal from office.]

[Sec. IV. requires naval officers, appointed by the governors for the customs service, to give security to the Commissioners of the Customs in England for the performance of their duty.]

V. And for the more effectuall preventing of Frauds and regulating Abuses in the Plantation Trade in America Bee itt further enacted . . . That all Shipps comeing into or goeing out of any of the said Plantations and ladeing or unladeing any Goods or Commodities whether the same bee His Majesties Shipps of Warr or Merchants Shipps and the Masters and Commanders thereof and their Ladings shall bee subject and lyable to the same Rules Visitations Searches Penalties and Forfeitures as to the entring lading or dischargeing theire respective Shipps and Ladings as Shipps and their Ladings and the Commanders and Masters of Shipps are subject and lyable unto in this Kingdome . . . [by virtue of the act 14 Chas. II., ch. 11]. . . . And that the Officers for collecting and manageing His Majesties Revenue and inspecting the Plantation Trade in any of the said Plantations shall have the same Powers and Authorities for visiting and searching of Shipps and takeing their Entries and for seizing and securing or bringing on Shoare any of the Goods prohibited to bee imported or exported into or out of any the said Plantations or for which any Duties are payable or ought to have beene paid by any of the before mentioned Acts as are provided for the Officers of the Customes in England by the said last mentioned Act . . . [of 14 Chas. II., ch. 11,] . . . and alsoe to enter Houses or Warehouses to search for and seize any such Goods And that all the Wharfingers and Owners of Keys and Wharfes or any Lightermen Bargemen Watermen Porters or other Persons assisting in the Conveyance Concealement or Rescue of any of the said Goods or in the hindering or resistance of any of the said Officers in the performance of their Duty and the Boates Barges Lighters or other Vessells imployed in the Conveyance of such Goods shall

bee subject to the like Paines and Penalties as are provided by the same Act . . . [of 14 Chas. II., ch. 11,] . . . in relation to prohibited or uncustomed Goods in this Kingdome And that the like Assistance shall bee given to the said Officers in the Execution of their Office as by the said last mentioned Act is provided for the Officers in England And alsoe that the said Officers shall bee subject to the same Penalties and Forfeitures for any Corruptions Frauds Connivances or Concealements in violation of any the before mentioned Lawes as any Officers of the Customes in England are lyable to by vertue of the said last mentioned Act. . . .

* * * * * * * * * * *

VIII. And itt is further enacted and declared. . . . That all Lawes By-laws Usages or Customes att this tyme or which hereafter shall bee in practice or endeavoured or pretended to bee in force or practice in any of the said Plantations which are in any wise repugnant to the before mentioned Lawes or any of them soe far as they doe relate to the said Plantations or any of them or which are [*in any*] wayes repugnant to this present Act or to any other Law hereafter to bee made in this Kingdome soe far as such Law shall relate to and mention the said Plantations are illegall null and void to all Intents and Purposes whatsoever.

* * * * * * * * * * *

X. [And for the better executing the severall Acts of Parliament relating to the Plantation Trade bee itt enacted. . . . That the Lord Treasurer Commissioners of the Treasury and the Commissioners of the Customes in England for the tyme being shall and may constitute and appoint such and soe many Officers of the Customes in any City Towne River Port Harbour or Creeke of or belonging to any of the Islands Tracts of Land and Proprieties when and so often as to them shall seeme needfull*] Bee itt further also enacted That upon any Actions Suites and Informations that shall bee brought commenced or entred in the said Plantations upon any Law or Statute concerning His Majesties Duties or Shipps or Goods to bee forfeited by reason of any unlawfull Importations or Exportations there shall not bee any Jury but of such onely as are Natives of England or Ireland or are borne in His Majesties said Plantations And also that upon

* Annexed to the original act in a separate schedule.

all such Actions Suits and Informations the Offences may bee laid or alleadged to bee in any Colony Province County Precinct or Division of any of the said Plantations where such Offences are alleadged to bee committed att the pleasure of the Officer or Informer.

* * * * * * * * * * *

XV. [(And *) bee itt further enacted . . . That all Persons and theire Assignees claymeing any Right or (Property †) in any Islands or Tracts of Land upon the Continent of America by Charter or Letters Patents shall not att any tyme hereafter alien sell or dispose of any of the said Islands Tracts of Land or Proprieties other than to the Naturall Borne Subjects of England Ireland Dominion of Wales or Towne of Berwick upon Tweed without the License and Consent of His Majesty His Heires and Successors signifyed by His or Their Order in Councill first had and obteyned And all Governours nominated and appointed by any such Persons or Proprietors who shall bee intituled to make such Nomination shall bee allowed and approved of by His Majesty His Heires and Successors as aforesaid and shall take the Oaths injoyned by this or any other Act to be taken by the Governours or Commanders in Chiefe in other His Majesties Colonies and Plantations before their entring upon their respective Governments under the like Penalty His Majesties Governours and Commanders in Chiefe are by the said Acts lyable to.‡]

XVI. [And for a more effectuall prevention of Frauds which may bee used to elude the Intention of this Act by colouring Foreigne Shipps under English Names Bee itt further enacted . . . That from and after the Five and twentieth day of March which shall bee in the Yeare of our Lord One thousand six hundred ninety eight noe Shipp or Vessell whatsoever shall bee deemed or passe as a Shipp of the Built of England Ireland Wales Berwick Guernsey Jersey or of any of His Majesties Plantations in America soe as to bee qualifyed to trade to from or in any of the said Plantations untill the Person or Persons claymeing Property in such Shipp or Vessell shall register the same as followeth (that is to say) If the Shipp att the tyme of such Register doth belong to any Port in England Ireland Wales or to the Towne of Berwick upon Tweed then Proofe shall bee made upon Oath of One

* Omitted in the MS. † The MS. has *Propriety*.

‡ Section XV. is annexed to the original act in a separate schedule.

or more of the Owners of such Shipp or Vessell before the Collector and Comptroller of His Majesties Customes in such Port or if att the tyme of such Register the Shipp belong to any of His Majesties Plantations in America or to the Islands of Guernsey or Jersey then the like Proofe to bee made before the Governour together with the Principall Officer of His Majesties Revenue resideing on such Plantation or Island which Oath the said Governours and Officers of the Customes respectively are hereby authorized to administer.*]. . . .

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No. 44. Pennsylvania Frame of Government

November, 1696

THE dissensions in Pennsylvania subsequent to 1683, due to disputes between the council and the assembly, the agitation in the Delaware counties over political privileges, and the excitement attending the preaching of George Keith, culminating in the Quaker schism, finally gave an opportunity for interference from England; and in 1692 the province was taken from the control of Penn, and placed under the government of Fletcher, the governor of New York. To this interference with the colony Penn, who had returned to England in 1684 on account of the boundary dispute with Maryland, and who, on account of his intimate relations with James II., was out of favor at court, could offer no effectual resistance. The charges against him, however, were disproven, and in 1694 the province was restored. The new governor, Markham, formerly lieutenant-governor under Fletcher, soon became involved in a dispute with the assembly, in which the question of the validity of the frame of 1683, in view of the transfer of Pennsylvania to Fletcher's control, was raised. A settlement was not reached until 1696, when the unwillingness of the assembly to comply with a call from Fletcher, under royal order, for aid in defending the frontiers of New York, unless the maintenance of popular rights could be assured, led to the submission by Markham of "some heads of a frame of government," supplementary to the frame of 1683. The money having been voted, and the new frame agreed to, the assembly was dissolved; but some popular disapproval of this action was met by an enactment of the following year, "that both Markham's frame of government and the laws passed in accordance therewith, should be legally binding in every respect."

REFERENCES. — *Text* in *Charter and Laws of Pennsylvania* (ed. 1879), 245–253.

[The document recites the grant of the charter of the province, the deeds from the Duke of York, the transfer of the government

* The passage in brackets is annexed to the original act in a separate schedule.

to Fletcher, the restoration of the province to Penn, and the appointment of Markham as governor, and continues:]

2. Now for as much as the former frame of government, modelled by act of Settlement and Charter of Liberties, is not deemed in all respects sutably accommodated to our present Circumstances Therefore It is unanimously Desired, that it may be Enacted. *And Be it Enacted by the Governour aforesaid, with the advice and Consent of the Representatives of the freemen of the said Province and Territories in Assembly met, and by the Authority of the same,* that this government shall, from time to time, Consist of the Governour or his Deputy or Deputies, and the freemen of the sd. Province and Territories thereof in form of a Council and Assembly. Which Council and Assembly shall be men of most note for virtue, wisdom & ability; and shall, from and after the tenth Day of the first month next, Consist of two persons out of each of the Counties of this government, to serve as the peoples Representatives in Council, and of four persons out of each of the said Counties to serve as Representatives in Assembly. For the election of which Representatives, It shall & may be lawful to & for all the freemen of this Province & Territories aforesaid to meet together on the tenth day of the first month yearly hereafter in the most Convenient and usual place for election within the respective Counties, then and there to choose their sd. representatives as aforesaid, Who shall meet on the tenth Day of the third moneth yearly in the Capital town of the sd. province, unless the Governour and Council shall think fit to appoint another place.

3. And to the end, It may be known who those that in this Province & territories have right of, or be deemed, freemen to Choose or to be Chosen to serve in Council and Assembly as aforesaid:

Be it Enacted by the authority aforesaid, That no Inhabitant of this Province or Territories, shall have right of electing, or being elected as aforesaid, Unless they be free Denizens of this government, and are of the age of Twenty one years or upwards, and have fifty acres of land, ten acres whereof being seated and cleared, or be otherwise worth fifty pounds lawful money of this government Clear estate, and have been Resident within this government for the space of two years next before such election.

4. *And whereas,* divers persons within this government, Can-

not (for Conscience sake) take an oath upon any account whatsoever:

Be it therefore Enacted by the Authority aforesaid, That all any [*and*] every such person and persons (being at any time hereafter required upon any lawful occasion to give evidence, or take an oath, in any Case whatsoever,) shall (instead of swearing) be permitted to make his or their solemn affirmation, attest or Declar'n, Which shall be adjudged, and is hereby Enacted & Declared to be of the same force and effect, to all Intents and purposes whatsoever, as if they had taken an oath. And in case any such person or persons shall be Lawfully Convicted of having wilfully & Corruptly affirmed or Declared any matter or thing upon such Solemn affirmation or attest, shall Incur the same penalties and forfeitures as by the Laws & Statutes of England, are provided against persons Convicted of wilful & Corrupt perjury:

And be it further Enacted by the authority aforesaid, That all persons who shall be hereafter, either elected to serve in Council and Assembly, or Commissionated or appointed to be Judges, Justices, Masters of the Rolls, Sheriffs, Coroners, and all other offices of State and trust within This government, who shall Conscientiously scruple to take an oath; But (when Lawfully required) will make and subscribe by the Declaration & profession of their Christian belief, according to the late act of Parliament, made in the first year of king William & the Late Queen Mary, entituled an act for exempting their Majesties Protestant subjects Dissenting from the Church of England, from the penalties of certain Laws, shall be adjudged & are hereby Declared to be qualified to act in their said respective offices and places, and thereupon the several officers herein mentioned, shall instead of oathes, make their Solemn affirmation or declaration in manner and form as is herein after limited and expressed. . . .

Provided always and it is hereby intended, that no person shall be by this Act excused from Swearing, who by the Acts of Parliament for trade and navigation, are or shall be required to take an oath.

5. And that Elections may not be corruptly managed, on which the good of the government so much Depends; *Be it further Enacted by the Authority aforesaid*, That all Elections of the said Representatives shall be free and Voluntary, And that

the elector who shall Receive any reward or gift for giving his vote, shall forfeit his right to elect for that year, And such person or persons as shall give or promise ainy such Reward to be elected, or that shall offer to serve for nothing, or less wages than the Law prescribes shall be thereby Rendered Incapable to serve in Council or Assembly for that year, And the Representatives so chosen either for Council or Assembly shall yield their attendance accordingly, and be the Sole Judges of the Regularity or Irregularity of the elections of their respective members, and if any person or persons, Chosen to Serve in Council or Assembly, shall be wilfully absent from the service hee or they are so chosen to attend, or be Deceased or Rendered Incapable, then and in all such Cases it Shall be lawfull for the Governour within ten Days after knowledge of the same, To Issue forth a writt to the Sheriff of the County, for which the said person or persons were chosen, Immediately to summons the freemen of the same to elect another member, in the room of such Absent, Deceast or Incapable person or persons. . . .

6. *Be It further Enacted by the Authority aforesaid*, that every Member now chosen or hereafter to be chosen by the freemen as aforesaid to Serve in Council, and the Speaker of the Assembly shall be allowed five shillings by the day, during his and their attendance, And every Member of Assembly shall be allowed four shillings by the day, during his attendance on the service of the Assembly, and that every Member of Council and Assembly shall be allowed towards their travelling Charges after the rate of two pence each mile both going to and coming from the place where the Council and Assembly is or Shall be held, all which sums shall be paid yearly, out of the County Levies, by the County receivers respectively.

And Be It further Enacted by the Authority aforesaid, That the Governour or his Deputy shall always preside in the Council, and that hee shall at no time perform any public act of state whatsoever that shall or may Relate unto the Justice, treasury or trade of the Province and territories, but by and with the advice and Consent of the Council thereof, or Major part of them that shall be present.

* * * * * * * * * * * *

[8.] *And Be It further Enacted by the Authority aforesaid*, that the Council in all cases and matters of moment as about

erecting Courts of Justice, sitting in Judgment upon persons Impeached, and upon bills and other matters, that may be from time to time presented by the assembly, not Less than two thirds shall make a Quorum, and that the Consent and approbation of the majority of that Quorum, shall be had in all such cases and matters of moment, And that in Cases of Lesser moment not less than one third of the whole shall make a Quorum, the majority of which shall and may always Determine in all such matters of Lesser moment, as are not above specified and in case the Governour's power shall hereafter happen to be in the Council, a President shall then be Chosen out of themselves, by two thirds or the Major part of them, which President shall therein reside. . . .

* * * * * * * * * * *

And Be It further Enacted by the Authority aforesaid, That the Governour and Council for the time being, shall at all times settle and order the scituation of all Cities and Market Towns, modelling therein all public buildings, Streets and Market places, And shall appoint all publick landing places of the Towns of this Province and Territories, and if any man's property shall be judged by the Governour and Council to be comodious for such Landing place in the said Towns, and that the same be by them appointed such, that the Owner shall have such reasonable satisfaction given him for the same as the Governour and Council shall see meet, to be paid by the said respective towns.

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9. *And Be It further Enacted by the Authority aforesaid*, That the Representatives of the freemen when met in Assembly shall have power to prepare and propose to the Governor and Council all such Bills as they or the Major part of them, shall at any time see needful to be past into Laws, within the said Province and Territories.

10. *Provided always*, that nothing herein Contained shall debar the Governour and Council from Recommending to the Assembly all such bills as they shall think fit to be past into laws, and that the Council and Assembly may upon Occasion confer together in Committies when desired all which said proposed and prepared Bills or such of them as the Governour with the advice of the Council, shall in Open Assembly, declare his assent unto, shall be the Laws of this Province and Territories thereof. . . .

... *And Be It further Enacted by the Authority aforesaid*, That the Assembly shall sit upon their own Adjournments and Committees and continue, in order to prepare and propose bills, Redress grievances and Impeach Criminalls, or such persons as they shall think fit to be there impeached, untill the Governour and Council for the time being shall Dismiss them, Which Assembly shall, notwithstanding such Dismiss, be capable of Assembling together, upon summons of the Governour and Council, as any time during that year, Two thirds of which Assembly in all cases shall make a Quorum.

... *And Be It further Enacted by the Authority aforesaid*, That all elections of Representatives tore Council and Assembly, and all questions to be determined by them shall be by the major parts of votes; . . .

No 45. Treaty of Ryswick

September 10/20, 1697

The war of the Palatinate, known in America as King William's, or Tyrconnel's war, was the last of four protracted conflicts which, accompanying or following the outbreak of war between England and France in 1689, aimed at the overthrow of the French power in America, and the restriction to England of the vast territory there claimed or held by its rival. The revocation of the Edict of Nantes, in 1685, had deprived the French Protestants of the religious and civil privileges which they had enjoyed since 1598, while the claim of Louis XIV to the succession of the Palatinate, on the extinction of the male line, in Elizabeth, wife of the Duke of Orleans, the King's brother, was an open menace to the German states. The League of Augsburg, formed in 1686 between the Empire, Sweden, Spain, Bavaria, Saxony and the Palatinate, was followed in 1689 by the Grand Alliance, in which England and Holland, under William of Orange, joined the powers of the League in resistance to France. The naval battle of La Hogue, in 1692, gave England the mastery of the sea, but in the same year the French took Namur, and retained the rules in Steenkirk. In 1695, however, William retook Namur, and the various military operations on the continent came to an end. At the beginning of the war, William directed an effort of colonial conquest, and the colonies of both powers promptly took up arms; but the English colonies in America were weakened by mutual jealousies and serious internal disturbances, while the French were vigorous and alert. The frontiers of New England and New York were ravaged by parties of French and Indians, to whom little effective resistance was opposed. In 1690 an expedition under Sir William Phipps took Port Royal, but a combined land and naval movement against Canada failed, and in 1691 Port Royal was retaken by the

French. In 1696–1697 a French expedition under D'Iberville took Pemaquid, St. John's, Newfoundland, and the fort at Hudson's Bay; but a proposed attack on New England was not carried out. Early in 1697 Louis offered concessions, and in September, after protracted negotiations, a treaty was signed at Ryswick. Only so much of the treaty as relates to America is given here.

REFERENCES. — *Text* in Chalmers's *Collection of Treaties*, I., 332–340. The war is treated at length in the general histories of the period; see also Parkman's *Frontenac and New France;* Winsor's *Narr. and Crit. Hist.*, IV., chap. 7. An interesting account of the negotiation of the treaty is given in Macaulay's *History of England*, IV., chap. 22.

VII. The most Christian King shall restore to the said King of Great Britain, all countries, islands, forts, and colonies, wheresoever situated, which the English did posess before the declaration of this present war. And in like manner the King of Great Britain shall restore to the most Christian King all countries, islands, forts, and colonies, wheresoever situated, which the French did possess before the said declaration of war; and this restitution shall be made, on both sides, within the space of six months, or sooner if it can be done. . . .

VIII. Commissioners shall be appointed on both sides, to examine and determine the rights and pretensions which either of the said Kings hath to the places situated in Hudson's Bay; but the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during this war, shall be left to the French, by virtue of the foregoing article. The capitulation made by the English on the fifth of September, 1696, shall be observed, according to its form and tenor; the merchandizes therein mentioned shall be restored; the governor of the fort taken there shall be set at liberty, if it be not already done; the differences arisen concerning the execution of the said capitulation, and the value of the goods there lost, shall be adjudged and determined by the said commissioners; who, immediately after the ratification of the present treaty, shall be invested with sufficient authority for settling the limits and confines of the lands to be restored on either side, by virtue of the foregoing article, and likewise for exchanging of land, as may conduce to the mutual interest and advantage of both Kings.

* * * * * * * * * * *

No. 6. Pennsylvania Charter of Privileges

October 28/November 8, 1701

PENN returned to Pennsylvania in December, 1699, and at once set himself to reorganize the government and to quiet dissension. In this, however, he was opposed by David Lloyd, the leading member of the Assembly, and also attorney-general; while popular complaint of the frame of 1696 was soon followed by a request for a new constitution. Penn had not assented to the frame of 1696, and now held that the frame of 1683 had been, under Fletcher, only temporarily in abeyance. Early in 1700 he agreed to the appointment of a committee of the council and the assembly to draw up a new frame or charter; but no result was reached. A new committee was chosen by the assembly in October, but did not begin its deliberations until September, 1701. In the meantime, efforts to adjust the differences with Delaware had failed, and there were reports of another movement in England to deprive Penn of his colony. These circumstances hastened agreement, and in October the charter of privileges was signed and accepted. The charter continued in force until replaced by the State constitution of 1776, although the sons of Penn and the legal advisers of the Crown seem not to have admitted its validity, alleging that it granted to the assembly more power than the charter of the province warranted. In 1702 the Delaware counties, availing themselves of a provision in the charter of privileges, established a separate assembly, and so continued until the formation of a State constitution in 1776.

REFERENCES. — *Text* in *Votes and Proceedings of the House of Representatives of Pennsylvania*, I., part II., pp. I.–III. On the dispute with Delaware, see especially Shepherd, *op. cit.*, part II., chap. 6.

[The document recites the grant of the charter of 1681, the deeds from the Duke of York, and the frame of 1683, together with Penn's promise either to restore the frame to the people of the province, or else to grant them one "better adapted to answer the present circumstances and conditions" of the colony, and continues:]

KNOW YE THEREFORE, That for the further Well-being and good Government of the said Province, and Territories; and in Pursuance of the Rights and Powers before-mentioned, I the said *William Penn* do declare, grant and confirm, unto all the Freemen, Planters, and Adventurers, and other Inhabitants of this Province and Territories, these following Liberties, Franchises and Privileges, so far as in me lieth, to be held, enjoyed, and kept, by the Freemen, Planters and Adventurers, and other Inhabitants of and in the said Province, and Territories thereunto annexed, for ever.

First,

BECAUSE no People can be truly happy, tho' under the greatest Enjoyment of civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship: And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare, That no Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge One almighty God, the Creator, Upholder and Ruler of the World; and profess him, or themselves, obliged to live quietly under the civil Government, shall be in any Case molested or perjudiced, in his or their Person or Estate, because of his or their conscientious Perswasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Perswasion.

AND that all Persons who also profess to believe in *Jesus Christ*, the Saviour of the World, shall be capable (notwithstanding their other Perswasions and Practices in Point of Conscience and Religion to) serve this Government in any Capacity, both legislatively and executively, he or they solemnly promising, when lawfully required, Allegiance to the King as Sovereign, and Fidelity to the Proprietary and Governor, and taking the Attests as now established by the Law made at *Newcastle*, in the Year *One Thousand* and *Seven Hundred*, intituled, *An Act directing the Attests of several Officers and Ministers, as now amended and confirmed this present Assembly.*

II.

FOR the well governing of this Province and Territories, there shall be an Assembly yearly chosen by the Freemen thereof, to consist of Four Persons out of each County, of most Note for Virtue, Wisdom and Ability (or of a greater Number at any Time, as the Governor and Assembly shall agree) upon the first Day of *October* for ever; and shall sit on the fourteenth Day of the same Month at *Philadelphia*, unless the Governor and Council for the Time being, shall see Cause to appoint another Place

within the said Province or Territories: Which Assembly shall have Power to chuse a Speaker and other their Officers; and shall be judges of the Qualifications and Elections of their own Members; sit upon their own Adjournments; appoint Committees; prepare Bills, in order to pass into Laws; impeach Criminals, and redress Grievances; and shall have all other Powers and Privileges of an Assembly, according to the Rights of the Freeborn Subjects of *England*, and as is usual in any of the King's Plantations in *America*.

AND if any County or Counties, shall refuse or neglect to chuse their respective Representatives as aforesaid, or if chosen, do not meet to serve in Assembly, those who are so chosen and met, shall have the full Power of an Assembly, in as ample Manner as if all the Representatives had been chosen and met, provided they are not less than Two Thirds of the whole Number that ought to meet.

AND that the Qualifications of Electors and Elected, and all other Matters and Things relating to Elections of Representatives to serve in Assemblies, tho' not herein particularly expressed, shall be and remain as by a Law of this Government, made at *Newcastle* in the Year *One Thousand Seven Hundred*, intituled, *An Act to ascertain the Number of Members of Assembly, and to regulate the Elections.*

III.

THAT the Freemen in each respective County, at the Time and Place of Meeting for Electing their Representatives to serve in Assembly, may, as often as there shall be Occasion, chuse a double Number of Persons to present to the Governor for Sheriffs and Coroners, to serve for Three Years, if so long they behave themselves well; out of which respective Elections and Presentments, the Governor shall nominate and commissionate one for each of the said Offices, the third Day after such Presentment, or else the first named in such Presentment, for each Office as aforesaid, shall stand and serve in that Office for the Time before respectively limited; and in case of Death or Default, such Vacancies shall be supplied by the Governor, to serve to the End of the said Term.

PROVIDED ALWAYS, That if the said Freemen shall, at any Time, neglect, or decline to chuse a Person or Persons for

either or both the aforesaid Offices, then and in such Case, the Persons that are or shall be in the respective Offices of Sheriffs or Coroners, at the Time of Election, shall remain therein, until they shall be removed by another Election as aforesaid.

AND that the Justices of the respective Counties, shall or may nominate and present to the Governor three Persons, to serve for Clerk of the Peace for the said County when there is a Vacancy, one of which the Governor shall commissionate within ten Days after such Presentment, or else the first nominated, shall serve in the said Office during good Behaviour.

[Article IV. relates to the style and record of the laws.]

V.

THAT all Criminals shall have the same Privileges of Witnesses and Council as their Prosecutors.

VI.

THAT no Person or Persons shall, or may, at any Time hereafter, be obliged to answer any Complaint, Matter or Thing whatsoever relating to Property, before the Governor and Council, or in any other Place, but in ordinary Course of Justice, unless Appeals thereunto shall be hereafter by Law appointed.

VII.

THAT no Person within this Government shall be licensed by the Governor to keep an Ordinary, Tavern, or House of publick Entertainment, but such who are first recommended to him, under the Hands of the Justices of the respective Counties, signed in open Court; which Justices are and shall be hereby impowered, to suppress and forbid any Person, keeping such Publick-house as aforesaid, upon their Misbehaviour, on such Penalties as the Law doth or shall direct; and to recommend others from time to time as they shall see Occasion.

VIII.

IF any Person, through Temptation or Melancholy, shall destroy himself, his Estate, real and personal, shall, notwithstanding, descend to his Wife and Children, or Relations, as if he had died a natural Death; and if any Person shall be

destroyed or killed by Casualty or Accident, there shall be no Forfeiture to the Governor by Reason thereof.

AND no Act, Law or Ordinance whatsoever shall, at any Time hereafter, be made or done, to alter, change or diminish the Form or Effect of this Charter, or of any Part or Clause therein, contrary to the true Intent and Meaning thereof, without the Consent of the Governor for the Time being, and Six Parts of Seven of the Assembly met.

BUT because the Happiness of Mankind depends so much upon the Enjoying of Liberty of their Consciences as aforesaid, I do hereby solemnly declare, promise and grant, for me, my Heirs and Assigns, That the first Article of this Charter relating to Liberty of Conscince, and every Part and Clause therein, according to the true Intent and Meaning thereof, shall be kept and remain, without any Alteration, inviolably for ever.

* * * * * * * * * * *

AND NOTWITHSTANDING the Closure and Test of this present Charter as aforesaid, I think fit to add this following Proviso thereunto, as Part of the same, *That is to say*, That notwithstanding any Clause or Clauses in the above-mentioned Charter, obliging the Province and Territories to join together in Legislation, I am content, and do hereby declare, That if the Representatives of the Province and Territories shall not hereafter agree to join together in Legislation, and that the same shall be signified unto me, or my Deputy, in open Assembly, or otherwise, from under the Hands and Seals of the Representatives, for the Time being, of the Province and Territories, or the major Part of either of them, at any Time within Three Years from the Date hereof, that in such Case, the Inhabitants of each of the Three Counties of this Province, shall not have less than Eight Persons to represent them in Assembly for the Province; and the Inhabitants of the Town of *Philadelphia* (when the said Town is incorporated) Two Persons to represent them in Assembly; and the Inhabitants of each County in the Territories, shall have as many Persons to represent them, in a distinct Assembly for the Territories, as shall be by them requested as aforesaid.

NOTWITHSTANDING which Separation of the Province and Territories, in Respect of Legislation, I do hereby promise, grant and declare, That the Inhabitants of both Province and

Territories, shall separately enjoy all other Liberties, Privileges and Benefits, granted jointly to them in this Charter, any Law, Usage or Custom of this Government heretofore made and practised, or any Law made and passed by this General Assembly, to the contrary hereof notwithstanding.

No. 47. Treaty of Utrecht

March 31/April 11, 1713

By the second partition treaty between William III. and Louis XIV., in 1700, it had been agreed that the Spanish succession, on the death of Charles II., should go to the Archduke Charles, son of the Emperor Leopold. But Charles II. by will bequeathed all his possessions to Philip, Duke of Anjou, grandson of Louis, though with the proviso that the crowns of France and Spain should never be united; and, on the death of Charles, Louis claimed the inheritance for Philip. The seizure of the barrier fortresses, early in 1701, was soon followed by war in Italy between Leopold and the combined French and Spanish forces. William placed Marlborough in command of the English forces in the Netherlands, and in September formed, with Austria and the Dutch Republic, the so-called Grand Alliance. The death of William, in March, 1702, did not interrupt the war, and the Grand Alliance was shortly joined by most of the German princes. The European phases of the war of the Spanish Succession, and the careers of Marlborough and Prince Eugene of Savoy, do not call for discussion here. In America, where the war is known as Queen Anne's war, the most important movements were in connection with the repeated attempts to conquer some part of the French possessions. After two unsuccessful expeditions, in 1704 and 1707, against Acadia, Port Royal finally surrendered, in 1710, to the English; but a combined land and naval demonstration against Canada came to nothing. In September, 1711, preliminary articles of peace were signed; the conferences of the commissioners began in January, 1712, at Utrecht; and March 31/April 11, 1713, the treaty was concluded. Only the articles relating to America are given here.

References. — *Text* in Chalmers's *Collection of Treaties*, I., 340–386. Mahon's *History of England [during the] Reign of Anne* covers the period of the war; see also Lecky's *England in the Eighteenth Century* (Amer. ed.), I., 26–54, 106–158; Parkman's *Half Century of Conflict.*

X. The said most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right for ever, the bay and streights of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said bay and streights, and which belong thereunto, no tracts of land or of

sea being excepted, which are at present possessed by the subjects of France. All which, as well as any buildings there made, in the condition they now are, and likewise all fortresses there erected, either before or since the French seized the same, shall, within six months from the ratification of the present treaty, or sooner, if possible, be well and truly delivered to the British subjects, having commission from the Queen of Great Britain to demand and receive the same, entire and undemolished, together with all the cannon and cannon-ball which are therein, as also with a quantity of powder, if it be there found, in proportion to the cannon-ball, and with the other provision of war usually belonging to cannon. It is, however, provided, that it may be entirely free for the company of Quebec, and all other the subjects of the most Christian King whatsoever, to go by land, or by sea, whithersoever they please, out of the lands of the said bay, together with all their goods, merchandizes, arms, and effects, of what nature or condition soever, except such things as are above reserved in this article. But it is agreed on both sides, to determine within a year, by commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbid to pass over, or thereby to go to each other by sea or by land. The same commissaries shall also have orders to describe and settle, in like manner, the boundaries between the other British and French colonies in those parts.

XI. The abovementioned most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods, by the hostile incursions and depredations of the French, in time of peace, an estimate being made thereof by commissaries to be named at the requisition of each party. The same commissaries shall moreover inquire as well into the complaints of the British subjects concerning ships taken by the French in time of peace, as also concerning the damages sustained last year in the island called Montserat, and others, as into those things of which the French subjects complain, relating to the capitulation in the island of Nevis, and castle of Gambia,

also to French ships, if perchance any such have been taken by British subjects in time of peace; and in like manner into all disputes of this kind, which shall be found to have arisen between both nations, and which are not yet ended; and due justice shall be done on both sides without delay.

XII. The most Christian King shall take care to have delivered to the Queen of Great Britain, on the same day that the ratifications of this treaty shall be exchanged, solemn and authentic letters, or instruments, by virtue whereof it shall appear, that the island of St. Christopher's is to be possessed alone hereafter by British subjects, likewise all Nova Scotia or Acadie, with its ancient boundaries, as also the city of Port Royal, now called Annapolis Royal, and all other things in those parts, which depend on the said lands and islands, together with the dominion, propriety, and possession of the said islands, lands, and places, and all right whatsoever, by treaties, or by any other way obtained, which the most Christian King, the crown of France, or any the subjects thereof, have hitherto had to the said islands, lands, and places, and the inhabitants of the same, are yielded and made over to the Queen of Great Britain, and to her crown, for ever, as the most Christian King doth at present yield and make over all the particulars abovesaid; and that in such ample manner and form, that the subjects of the most Christian King shall hereafter be excluded from all kind of fishing in the said seas, bays, and other places, on the coasts of Nova Scotia, that is to say, on those which lie towards the east, within 30 leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the south-west.

XIII. The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this treaty, or sooner, if possible, by the most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island and islands, or to any part of it, or them. Moreover, it shall not be lawful for the subjects of France to

fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said island, beyond the time necessary for fishing, and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river of St. Lawrence, and in the gulph of the same name, shall hereafter belong of right to the French, and the most Christian King shall have all manner of liberty to fortify any place or places there.

XIV. It is expressly provided, that in all the said places and colonies to be yielded and restored by the most Christian King, in pursuance of this treaty, the subjects of the said King may have liberty to remove themselves, within a year, to any other place, as they shall think fit, together with all their moveable effects. But those who are willing to remain there, and to be subject to the Kingdom of Great Britain, are to enjoy the free exercise of their religion, according to the usage of the church of Rome, as far as the laws of Great Britain do allow the same.

XV. The subjects of France inhabiting Canada, and others, shall hereafter give no hinderance or molestation to the five nations or cantons of Indians, subject to the dominion of Great Britain, nor to the other natives of America, who are friends to the same. In like manner, the subjects of Great Britain shall behave themselves peaceably towards the Americans who are subjects or friends to France; and on both sides they shall enjoy full liberty of going and coming on account of trade. As also the natives of those countries shall, with the same liberty, resort, as they please, to the British and French colonies, for promoting trade on one side and the other, without any molestation or hinderance, either on the part of the British subjects or of the French. But it is to be exactly and distinctly settled by commissaries, who are, and who ought to be accounted the subjects and friends of Britain or of France.

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No. 48. Explanatory Charter of Massachusetts

August 26/September 6, 1725

THE origin of the so-called explanatory charter of Massachusetts is to be found in the disputes between Governor Samuel Shute and the General Court. When Shute assumed his office, in 1716, a sharp controversy was in progress over the question of paper money and a public bank. Shute sided with the party who favored a bank, and thereby aroused the political opposition of the opponents of that scheme. In 1720 the House of Representatives chose as their speaker Elisha Cooke, who had espoused the cause of the people of Maine in a dispute about the right of cutting timber in the district, and had, in consequence, been rejected as councillor. Shute now disapproved of the choice of Cooke as speaker; and, on the House refusing to elect another, dissolved the General Court. In 1721 the House adjourned for a week without the consent of the governor, — a proceeding which the latter claimed was in violation of the charter. Eventually Shute carried the controversy to England, and laid his case before the Privy Council. The explanatory charter, issued Aug. 26/Sept. 6, 1725, was prudently accepted by the General Court Jan. 15/26, 1725/6.

REFERENCES. — *Text* in *Acts and Resolves of the Province of Massachusetts Bay*, I., 21–23.

[The charter recites the grant of the province charter of 1691, and continues:]

And Whereas, their said late Majesties King William and Queen Mary did by the said recited letters Patents (amongst other things therein contained) for themselves their Heires and Successors Ordain and Grant that there should and might be Convened held and kept by the Governor for the time being upon every last Wednesday in the Month of May every year forever and at all such other times as the Governor of their said Province should think fitt and Appoint a Great and Generall Court or Assembly which . . . should Consist of the Governour and Council or Assistants for the time being and of such Freeholders of their said Province or Territory as should be from time to time elected or deputed by the major part of the Freeholders and other Inhabitants of the respective Towns or places who should be present at such Elections each of the said Towns and places being thereby impowered to Elect and Depute two Persons and no more to Serve for and represent them respectively in the said Great and Generall Court or Assembly and that

the Governor for the time being should have full Power and Authority from time to time as he should Judge necessary to adjourn Prorogue and Dissolve all Great and General Courts or Assemblies met and Convened as aforesaid And did thereby also . . . Ordain that in the Framing and Passing of all Orders laws Statutes and Ordinances and in all Elections and Acts of Government whatsoever to be passed made or done by the said General Court or Assembly or in Council the Governor . . . should have the Negative Voice and that without his Consent or Approbation Signified and Declared in writing no such Orders laws Statutes Ordinances Elections or other Acts of Government whatsoever . . . should be of any force Effect or Validity. . . . And Whereas no Provision is made by the said recited letters Patents touching the Nomination and Election of a Speaker of the Representatives Assembled in any Great and Generall Court of Our said Province nor any particular Reservation made of the Right of Us Our Heires and Successors to approve or disapprove of such Speaker by the Governor of the said Province. . . . And no power is Granted . . . to the said House of Representatives to adjourn themselves for any time whatsoever by means whereof divers Doubts and Controversies have Arisen within Our said Province to the Interruption of the Publick Business thereof and the obstruction of Our Service Know Yee therefore that for removing the said Doubts and Controversies and preventing the like mischiefs for the future And also for the further Explanation of the said recited letters Patents Wee . . . by these Presents . . . Do Will Grant Ordain and Appoint that for ever hereafter the Representatives Assembled in any Great or General Court of Our said Province to be hereafter Summoned shall upon the first day of their Assembling Elect a fit Person out of the said Representatives to be Speaker of the House of Representatives in such General Court and that the Person so Elected shall from time to time be presented to the Governor of Our said Province for the time being or in his absence to the lieutenant Governor or Commander in Chief of Our said Province for the time being for his Approbation to which Governor lieutenant Governor and Commander in Chief respectively Wee do hereby . . . Give full power and Authority to approve or disapprove of the Person so Elected and presented which approbation or disapprobation shall be Signifyed by him by Message in writing under his Hand to the said

House of Representatives And in Case such Governour lieutenant Governor or Commander in Chief shall disapprove of the Person so Elected and presented or the Person so Elected and presented being approved as aforesaid shall happen to dye or by Sickness or otherwise be disabled from Officiating as Speaker in every such Case the said Representatives so Assembled shall forthwith Elect an other Person to be Speaker . . . to be presented and approved or disapproved in manner as aforesaid. . . . And . . . [*further*] . . . Wee do . . . Grant Ordain and Appoint that it shall and may be lawfull to and for the Representatives assembled in any Great or Generall Court of Our said Province . . . to Adjourn themselves from day to day (and if occasion shall require) for the space of two days but not for any longer time than for the space of two days without leave from the Governor or in his Absence [from] the lieutenant Governor or Commander in Chief of Our said Province for the time being first had and obtained in that behalfe any thing in the said recited letters Patents contained to the Contrary thereof in any wise Notwithstanding Provided always that nothing in these presents contained shall Extend or be Construed to Extend to revoke alter or prejudice the Power and Authority by the said recited letters Patents Granted to the Governor . . . to Adjourn Prorogue and Dissolve all Great and General Courts or Assemblies of Our said Province. . . .

No. 49. Charter of Georgia

June 9/20, 1732

THE plan for a colony in Georgia originated with James Edward Oglethorpe, an English gentleman of good family, who had served with distinction under Prince Eugene of Savoy, and later had entered the House of Commons. Oglethorpe's sympathies having been enlisted on behalf of imprisoned debtors and discharged prisoners, he conceived the idea of establishing in America a colony where worthy persons of those classes could get a new start in life. The charter granted to trustees certain territory south of the Savannah river, which had originally formed part of South Carolina, but had been retained by the Crown when the Carolinas were surrendered by the proprietors in 1729. To this was added the one-eighth interest retained by Carteret at the time of the surrender, and which he now conveyed to the trustees. The charter was surrendered in 1752, and Georgia became a royal province.

REFERENCES. — *Text* in Poore's *Federal and State Constitutions*, I., 369–377. The *Journal* of the trustees has been privately printed (1886). Various

contemporary accounts are reprinted in the *Collections* of the Georgia Hist. Society, and in Force's *Tracts*, I. See also Winsor's *Narr. and Crit. Hist.*, V., chap. 6; and early documents in Charles Lee's *Report on Claims to Lands in the Southwestern Parts of the United States*, in Amer. State Papers, *Public Lands*, I., 34–67.

GEORGE the second, [&c] . . .

Whereas we are credibly informed, that many of our poor subjects are, through misfortunes and want of employment, reduced to great necessity, insomuch as by their labor they are not able to provide a maintenance for themselves and families; and if they had means to defray their charges of passage, and other expences, incident to new settlements, they would be glad to settle in any of our provinces in America where by cultivating the lands, at present waste and desolate, they might not only gain a comfortable subsistence for themselves and families, but also strengthen our colonies and increase the trade, navigation and wealth of these our realms. And whereas our provinces in North America, have been frequently ravaged by Indian enemies; more especially that of South-Carolina, which in the late war, by the neighboring savages, was laid waste by fire and sword, and great numbers of English inhabitants, miserably massacred, and our loving subjects who now inhabit them, by reason of the smallness of their numbers, will in case of a new war, be exposed to the late [*like*?] calamities; inasmuch as their whole southern frontier continueth unsettled, and lieth open to the said savages — And whereas we think it highly becoming our crown and royal dignity, to protect all our loving subjects, be they never so distant from us; to extend our fatherly compassion even to the meanest and most infatuated of our people, and to relieve the wants of our above mentioned poor subjects; and that it will be highly conducive for accomplishing those ends, that a regular colony of the said poor people be settled and established in the southern territories of Carolina. And whereas we have been well assured, that if we will be graciously pleased to erect and settle a corporation, for the receiving, managing and disposing of the contributions of our loving subjects: divers persons would be induced to contribute to the purposes aforesaid — Know ye therefore, that we have, for the considerations aforesaid, and for the better and more orderly carrying on of the said good purposes . . . , willed, ordained, constituted and appointed, and by

these presents, for us, our heirs and successors, do will, ordain, constitute, declare and grant, that our right trusty and well beloved John, lord-viscount Purcival, of our kingdom of Ireland, our trusty and well beloved Edward Digby, George Carpenter, James Oglethorpe, George Heathcote, Thomas Tower, Robert Moore, Robert Hucks, Roger Holland, William Sloper, Francis Eyles, John Laroche, James Vernon, William Beletha, esquires, A. M. John Burton, B. D. Richard Bundy, A. M. Arthur Bedford, A. M. Samuel Smith, A. M. Adam Anderson and Thomas Corane, gentleman; and such other persons as shall be elected in the manner herein after mentioned, and their successors to be elected in the manner herein after directed; be, and shall be one body politic and corporate, in deed and in name, by the name of the Trustees for establishing the colony of Georgia in America; . . . and that they and their successors by that name shall and may forever hereafter, be persons able and capable in the law, to purchase, have, take, receive and enjoy, to them and their successors, any manors, messuages, lands, tenements, rents, advowsons, liberties, privileges, jurisdictions, franchises, and other hereditaments whatsoever, lying and being in Great Britain, or any part thereof, of whatsoever nature, kind or quality, or value they be, in fee and in perpetuity, not exceeding the yearly value of one thousand pounds, beyond reprises; also estates for lives, and for years, and all other manner of goods, chattels and things whatsoever they be; for the better settling and supporting, and maintaining the said colony, and other uses aforesaid; and to give, grant, let and demise the said manors, messuages, lands, tenements, hereditaments, goods, chattels and things whatsoever aforesaid, by lease or leases, for term of years, in possession at the time of granting thereof, and not in reversion, not exceeding the term of thirty-one years, from the time of granting thereof; on which in case no fine be taken, shall be reserved the full, and in case a fine be taken, shall be reserved at least a moiety of the value that the same shall reasonably and *bona fide* be worth at the time of such demise; and that they and their successors, by the name aforesaid, shall and may forever hereafter, be persons able, capable in the law, to purchase, have, take, receive, and enjoy, to them and their successors, any lands, territories, possessions, tenements, jurisdictions, franchises and hereditaments whatsoever, lying and being in America, of what quantity, quality

or value whatsoever they be, for the better settling and supporting and maintaining the said colony; . . . And we do further grant . . . that the said corporation, and the common council of the said corporation, hereinafter by us appointed, may from time to time, and at all times, meet about their affairs when and where they please, and transact and carry on the business of the said corporation. And for the better execution of the purposes aforesaid, we do . . . give & grant to the said corporation, and their successors, that they and their successors forever, may upon the third Thursday in the month of March, yearly, meet at some convenient place to be appointed by the said corporation, or major part of them who shall be present at any meeting of the said corporation, to be had for the appointing of the said place; and that they, or two thirds of such of them, that shall be present at such yearly meeting, and at no other meeting of the said corporation, between the hours of ten in the morning and four in the afternoon of the same day, choose and elect such person or persons to be members of the said corporation, as they shall think beneficial to the good designs of the said corporation. [The council may, from the corporation, fill vacancies caused by death or resignation; and all members shall be sworn.] And our will and pleasure is, that the first president of the said corporation is and shall be our trusty and well-beloved, the said Lord John Viscount Percival; and that the said president shall, within thirty days after the passing this charter, cause a summons to be issued to the several members of the said corporation herein particularly named, to meet at such time and place as he shall appoint, to consult about and transact the business of said corporation. And our will and pleasure is, and we, by these presents . . . , grant, ordain, and direct, that the common council of this corporation shall consist of fifteen in number; and we do, by these presents, nominate, constitute, and appoint . . . John Lord Viscount Percival, . . . Edward Digby, George Carpenter, James Oglethorpe, George Heathcote, Thomas Laroche, James Vernon, William Beletha, esqrs., and Stephen Hales, Master of Arts, to be the common council of the said corporation, to continue in the said office during their good behavior. And whereas it is our royal intention, that the members of the said corporation should be increased by election, as soon as conveniently may be, to a greater number than is hereby nominated; . . . we do hereby

. . . ordain and direct, that from the time of such increase of the members of the said corporation, the number of the common council shall be increased to twenty-four; and that the same assembly at which such additional members of the said corporation shall be chosen, there shall likewise be elected in the manner hereinbefore directed for the election of common council men, nine persons to be the said common council men, and to make up the number twenty-four. And our further will and pleasure is, that . . . Edward Digby, esquire, shall be the first chairman of the common council of the said corporation; and that the said lord-viscount Purcival shall be, and continue, president of the said corporation, and that the said Edward Digby shall be and continue chairman of the common council of the said corporation, respectively, until the meeting which shall be had next and immediately after the first meeting of the said corporation, or of the common council of the said corporation respectively, and no longer; at which said second meeting, and every other subsequent and future meeting of the said corporation or of the common council of the said corporation respectively, in order to preserve an indifferent rotation of the several offices, of president of the corporation, and of chairman of the common council of the said corporation we do direct and ordain that all and every the person and persons, members of the said common council for the time being, and no other, being present at such meetings, shall severally and respectively in their turns, preside at the meetings which shall from time to time be held of the said corporation, or of the common council of the said corporation respectively: and in case any doubt or question shall at any time arise touching or concerning the right of any member of the said common council to preside at any meeting of the said corporation, or at the common council of the said corporation, the same shall respectively be determined by the major part of the said corporation, or of the common council of the said corporation respectively, who shall be present at such meeting. Provided always, that no member of the said common council having served in the offices of president of the said corporation, or of chairman of the common council of the said corporation, shall be capable of being, or of serving as president or chairman at any meeting of the said corporation, or common council of the said corporation next and immediately ensuing that in which he

so served as president of the said corporation or chairman of the said common council of the said corporation respectively; unless it shall so happen that at any such meeting of the said corporation, there shall not be any other member of the said common council present. And our will and pleasure is, that at all and every of the meetings of the said corporation, or of the common council of the said corporation, the president or chairman for the time being, shall have a voice and shall vote, and shall act as a member of the said corporation or of the common council of the said corporation, at such meeting; and in case of any equality of votes, the said president or chairman for the time being, shall have a casting vote. And our further will and pleasure is, that no president of the said corporation, or chairman of the common council of the said corporation, or member of the said common council or corporation, by us by these presents appointed, or hereafter from time to time to be elected and appointed in manner aforesaid, shall have, take, or receive, directly or indirectly, any salary, fee, perquisite, benefit or profit whatsoever, for or by reason of his or their serving the said corporation, or common council of the said corporation, or president, chairman or common council-man, or as being a member of the said corporation. And our will and pleasure is, that the said herein before appointed president, chairman or common council-men, before he and they act respectively as such, shall severally take an oath for the faithful and due execution of their trust, to be administered to the president by the Chief Baron of our Court of Exchequer, for the time being, and by the president of the said corporation to the rest of the common council, who are hereby authorised severally and respectively, to administer the same. And our will and pleasure is, that all and every person and persons, [*who*] shall have in his or their own name or names, or in the name or names of any person or persons in trust for him or them, or for his or their benefit, any place, office or employment of profit, under the said corporation, shall be incapable of being elected a member of the said corporation; and if any member of the said corporation during such time as he shall continue a member thereof, shall in his own name or in the name of any person or persons, in trust for him or for his benefit, have, hold or exercise, accept, possess or enjoy, any office, place or employment of profit, under the said corporation, or under the common

council of the said corporation — such member shall from the time of his having, holding, exercising, accepting possessing and enjoying such office, place and employment of profit, cease to be a member of the said corporation. And we do . . . grant unto the said corporation, that they and their successors or the major part of such of them as shall be present at any meeting of the said corporation, convened and assembled for that purpose by a convenient notice thereof, shall have power from time to time, and at all times hereafter, to authorize and appoint such persons as they shall think fit to take subscriptions, and to gather and collect such moneys as shall be by any person or persons contributed for the purposes aforesaid; and shall and may revoke and make void such authorities and appointments, as often as they shall see cause so to do. And we do hereby . . . ordain and direct, that the said corporation every year lay an account in writing before the chancellor, or speaker, or commissioners, for the custody of the great seal of Great-Britain . . . ; the Chief Justice of the Court of Kings' Bench, the Master of Rolls the Chief Justice of the Court of Common Pleas, and the chief Baron of the Exchequer . . . , or any two of them; of all moneys and effects by them received or expended, for carrying on the good purposes aforesaid. And we do hereby . . . give and grant unto the said corporation, and their successors, full power and authority to constitute, ordain and make, such and so many by-laws, constitutions, orders and ordinances, as to them, or the greater part of them, at their general meeting for that purpose, shall seem necessary and convenient for the well ordaining and governing of the said corporation; and the said by-laws, constitutions, orders and ordinances, or any of them, to alter and annul, as they or the major part of them then present shall see requisite; and in and by such by-laws, rules, orders and ordinances, to sell, impose and inflict, reasonable pains and penalties upon any offender or offenders, who shall trangress, break or violate the said by-laws, constitutions, orders and ordinances . . . , and to mitigate the same as they or the major part of them then present shall think convenient; which said pains and penalties, shall and may be levied, sued for, taken, retained and recovered, by the said corporation and their successors, by their officers and servants, from time to time, to be appointed for that purpose, by action of debt, or by any other lawful ways or means, to the use

and behoof of the said corporation and their successors, all and singular: which by-laws, constitutions, orders and ordinances, so as aforesaid to be made, we will shall be duly observed and kept, under the pains and penalties therein to be contained, so always, as the said by-laws, constitutions, orders, and ordinances, pains and penalties . . . , be reasonable and not contrary or repugnant to the laws or statutes of this our realm; and that such by-laws, constitutions and ordinances, pains and penalties . . . , and any repeal or alteration thereof, or any of them, may be likewise agreed to be established and confirmed by the said general meeting of the said corporation, to be held and kept next after the same shall be respectively made. And whereas the said corporation intend to settle a colony, and to make an habitation and plantation in that part of our province of South-Carolina, in America, herein after described — Know ye, that we greatly desiring the happy success of the said corporation, for their further encouragement in accomplishing so excellent a work . . . do give and grant to the said corporation and their successors under the reservation, limitation and declaration, hereafter expressed, seven undivided parts, the whole in eight equal parts to be divided, of all those lands, countrys and territories, situate, lying and being in that part of South-Carolina, in America, which lies from the most northern part of a stream or river there, commonly called the Savannah, all along the sea coast to the southward, unto the most southern stream of a certain other great water or river called the Alatamaha, and westterly from the heads of the said rivers respectively, in direct lines to the south seas; and all that share, circuit and precinct of land, within the said boundaries, with the islands on the sea, lying opposite to the eastern coast of the said lands, within twenty leagues of the same, which are not inhabited already, or settled by any authority derived from the crown of Great-Britain: . . . to be holden of us, our heirs and successors as of our honour of Hampton-court, in our county of Middlesex in free and common soccage, and not in capite, yielding, and paying therefor to us, our heirs and successors yearly forever, the sum of four shillings for every hundred acres of the said lands, which the said corporation shall grant, demise, plant or settle; the said payment not to commence or to be made, until ten years after such grant, demise, planting or settling; and to be answered and paid . . . in such manner and

in such species of money or notes, as shall be current in payment, by proclamation from time to time, in our said province of South-Carolina. All which lands, countries, territories and premises, hereby granted or mentioned, and intended to be granted, we do by these presents, make, erect and create one independent and separate province, by the name of Georgia, by which name we will, the same henceforth be called. And that all and every person or persons, who shall at any time hereafter inhabit or reside within our said province, shall be, and are hereby declared to be free, and shall not be subject to or be bound to obey any laws, orders, statutes or constitutions, which have been heretofore made, ordered or enacted by, for, or as, the laws, orders, statutes or constitutions of our said province of South-Carolina, (save and except only the [*commander*] in chief of the militia, of our said province of Georgia, to our governor for the time being of South-Carolina, in manner hereafter declared;) but shall be subject to, and bound to obey, such laws, orders, statutes and constitutions as shall from time to time be made, ordered and enacted, for the better government of the said province of Georgia, in the manner hereinafter declared. And we do hereby, for our heirs and successors, ordain, will and establish, that for and during the term of twenty-one years, to commence from the date of these our letters patent, the said corporation assembled for that purpose, shall and may form and prepare, laws, statutes and ordinances, fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of England; and the same shall and may present under their common seal to us, our heirs and successors, in our or their privy council for our or their approbation or disallowance: and the said laws, statutes and ordinances, being approved of by us, our heirs and successors, in our or their privy council, shall from thence forth be in full force and virtue within our said province of Georgia. And forasmuch as the good and prosperous success of the said colony cannot but chiefly depend, next under the blessing of God, and the support of our royal authority, upon the provident and good direction of the whole enterprise, and that it will be too great a burthen upon all the members of the said corporation to be convened so often as may be requisite, to hold meetings for the settling, supporting, ordering, and maintaining the said colony; therefore we do will, ordain and establish, that the said common

council for the time being, of the said corporation, being assembled for that purpose, or the major part of them, shall . . . have full power and authority to dispose of, extend and apply all the monies and effects belonging to the said corporation, in such manner and ways and by such expenses as they shall think best to conduce to the carrying on and effecting the good purposes herein mentioned and intended; and also shall have full power in the name and on account of the said corporation, and with and under their common seal, to enter under any covenants or contracts, for carrying on and effecting the purposes aforesaid. [The common council may appoint and remove treasurers, secretaries, and other officers, and fix their compensation; but treasurers and secretaries shall not, during their terms of office, be members of the corporation.] . . . And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do . . . ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offence or scandal to the government. And our further will and pleasure is, and we do hereby . . . declare and grant, that it shall and may be lawful for the said common council, or the major part of them assembled for that purpose, in the name of the corporation, and under the common seal, to distribute, convey, assign and set over such particular portions of lands, tenements and hereditaments by these presents granted to the said corporation, unto such our loving subjects, natural born, denizens or others that shall be willing to become our subjects, and live under our allegiance in the said colony, upon such terms, and for such estates, and upon such rents, reservations and conditions as the same may be lawfully granted, and as to the said common council, or the major part of them so present, shall seem fit and proper. Provided always that no grants shall be made of any part of the said lands unto any person, being a member of the said corporation, or to any other person in trust, for the benefit of any member of the said corporation; and that no person having any estate or interest, in law or equity, in any part of the said lands, shall be capable of being a member of the

said corporation, during the continuance of such estate or interest. Provided also, that no greater quantity of lands be granted, either entirely or in parcels, to or for the use, or in trust for any one person, than five hundred acres; and that all grants made contrary to the true intent and meaning hereof, shall be absolutely null and void. And we do hereby grant and ordain, that such person or persons, for the time being as shall be thereunto appointed by the said corporation, shall . . . have full power and authority to administer and give the oaths, appointed by an act of parliament, made in the first year of the reign of our late royal father, to be taken instead of the oaths of allegiance and supremacy; and also the oath of abjuration, to all and every person and persons which shall at any time be inhabiting or residing with our said colony; and in like cases to administer the solemn affirmation to any of the persons commonly called quakers, in such manner as by the laws of our realm of Great-Britain, the same may be administered. And we do . . . ordain . . . that the said corporation and their successors, shall have full power and authority, for and during the term of twenty-one years, to commence from the date of these our letters patent, to erect and constitute judicatories and courts of record, or other courts, to be held in the name of us, our heirs and successors for the hearing and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things whatsoever, arising or happening, within the said province of Georgia, or between persons of Georgia; whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixed: and for awarding and making out executions thereupon; to which courts and judicatories, we do hereby . . . grant full power and authority, from time to time, to administer oaths for the discovery of truth in any matter in controversy, or depending before them, or the solemn affirmation, to any of the persons commonly called quakers, in such manner, as by the laws of our realm of Great-Britain, the same may be administered. And our further will and pleasure is, that the said corporation and their successors, do from time to time, and at all times hereafter, register or cause to be registered, all such leases, grants, plantings, conveyances, settlements, and improvements whatsoever, as shall at any time hereafter be made by, or in the name of the said corporation, of any lands,

tenements or hereditaments within the said province; and shall yearly send and transmit, or cause to be sent or transmitted, authentic accounts of such leases, grants, conveyances, settlements and improvements respectively, unto the auditor of the plantations for the time being, or his deputy, and also to our surveyor for the time being of our said province of South-Carolina; to whom we do hereby grant full power and authority from time to time, as often as need shall require, to inspect and survey, such of the said lands and premises, as shall be demised, granted and settled as aforesaid: which said survey and inspection, we do hereby declare, to be intended to ascertain the quitrents which shall from time to time become due to us, our heirs and successors, according to the reservation herein before mentioned, and for no other purposes whatsoever; hereby for us, our heirs and successors, strictly enjoining and commanding, that neither our or their surveyor, or any person whatsover, under the pretext and colour of making the said survey or inspection, shall take, demand or receive, any gratuity, fee or reward, of or from, any person or persons, inhabiting in the said colony, or from the said corporation or common council of the same, on the pain of forfeiture of the said office or offices, and incurring our highest displeasure. Provided always . . . , that all leases, grants and conveyances to be made by or in the name of the said corporation, of any lands within the said province, or a memorial containing the substance and effect thereof, shall be registered with the auditor of the said plantations . . . within the space of one year, to be computed from the date thereof, otherwise the same shall be void. And our further will and pleasure is, that the rents, issues and all other profits, which shall at any time hereafter come to the said corporation, [*shall be applied in such manner as the said corporation*,*] or the major part of them which shall be present at any meeting for that purpose assembled, shall think will most improve and enlarge the said colony, and best answer the good purposes herein before mentioned, and for defraying all other charges about the same. And our will and pleasure is, that the said corporation and their successors, shall from time to time give in to one of the principal secretaries of state, and to the commissioners of trade and plantations, ac-

* These words are not in the original, but appear to be necessary to complete the sense.

counts of the progresses of the said colony. And our will and pleasure is that no act done at any meeting of the said common council of the said corporation, shall be effectual and valid, unless eight members at least of the said common council, including the member who shall serve as chairman at the said meeting, be present, and the major part of them consenting thereunto. And our will and pleasure is, that the common council of the said corporation for the time being, or the major part of them who shall be present, being assembled for that purpose, shall from time to time, for, and during, and unto the full end and expiration of twenty-one years, to commence from the date of these our letters patent, have full power and authority to nominate, make, constitute and commission, ordain and appoint, by such name or names, style or styles, as to them shall seem meet and fitting, all and singular such governors, judges, magistrates, ministers and officers, civil and military, both by sea and land, within the said districts, as shall by them be thought fit and needful to be made or used for the said government of the said colony; save always, and except such offices only as shall by us, our heirs and successors, be from time to time constituted and appointed, for the managing collecting and receiving such revenues, as shall from time to time arise within the said province of Georgia, and become due to us, our heirs and successors. Provided always . . . , that every governor of the said province of Georgia, to be appointed by the common council of the said corporation, before he shall enter upon or execute the said office of governor, shall be approved by us, our heirs or successors, and shall take such oaths, and shall qualify himself in such manner, in all respects, as any governor or commander in chief of any of our colonies or plantations in America, are by law required to do; and shall give good and sufficient security for observing the several acts of parliament relating to trade and navigation, and to observe and obey all instructions that shall be sent to him by us, our heirs and successors, or any acting under our or their authority, pursuant to the said acts, or any of them. [The corporation may establish and train a militia, fortify and defend the colony, exercise martial law in time of war, &c.] And . . . we do . . . grant, that the governor and commander in chief of the province of South-Carolina . . . for the time being, shall at all times hereafter have the chief command of

the militia of our said province . . . ; and that such militia shall observe and obey all orders and directions, that shall from time to time be given or sent to them by the said governor or commander in chief; any thing in these presents before contained to the contrary hereof, in any wise notwithstanding. . . . And . . . we . . . do give and grant, unto the said corporation and their successors, full power and authority to import and export their goods, at and from any port or ports that shall be appointed by us . . . within the said province of Georgia, for that purpose, without being obliged to touch at any other port in South-Carolina. And we do . . . will and declare, that from and after the termination of the said term or [*of*] twenty-one years, such form of government and method of making laws, statutes and ordinances, for the better governing and ordering the said province of Georgia, and the inhabitants thereof, shall be established and observed within the same, as we, our heirs and successors, shall hereafter ordain and appoint, and shall be agreeably to law; and that from and after the determination of the said term of twenty-one years, the governor of our said province of Georgia, and all officers civil and military, within the same, shall from time to time be nominated and constituted, and appointed by us, our heirs and successors. . . .

No. 50. Molasses Act

May 17/28, 1733

In the exchange of fish, lumber and agricultural products for the sugar, molasses and rum of the West Indies, the northern English colonies in America early found their most important and most lucrative trade. Moreover, it was by means of this trade that the money for the purchase of manufactured goods in England was mainly obtained. The adoption of a more liberal commercial policy by France, however, in 1717, enabled the sugar of the French West Indies to displace the British product in European markets, and to compete successfully in the markets of the English colonies; while the prohibition of the importation of rum into France, as a protection to the production of brandy, forced the producers of molasses in the French colonies to seek a market in New England and New York, where molasses, little produced in the English West Indies, was much in demand. The prosperity of the French colonies led to numerous protests from planters in the British sugar islands, and in 1731 a bill to prohibit the importation into Great Britain or the American colonies of any foreign sugar, molasses or rum passed

the House of Commons, but was rejected by the Lords. The object of the bill was attained, however, by the passage, in 1733, of the so-called Molasses Act, by which practically prohibitory duties were imposed upon the before-mentioned articles. The act was systematically disregarded by the English colonies, and remained largely a dead-letter. The Molasses Act was to continue in force for five years; but it was five times renewed, and by the Sugar Act of 1764 was made perpetual.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XVI., 374–379. The act is cited as 6 Geo. II., c. 13. The best discussion of the act is in Beer's *Commercial Policy of England* (Columbia Col. *Studies*, III, No. 2), chap. 6.

An act for the better securing and encouraging the trade of his Majesty's sugar colonies in America.

WHEREAS *the welfare and prosperity of your Majesty's sugar colonies in* America *are of the greatest consequence and importance to the trade, navigation and strength of this kingdom: and whereas the planters of the said sugar colonies have of late years fallen under such great discouragements, that they are unable to improve or carry on the sugar trade upon an equal footing with the foreign sugar colonies, without some advantage and relief be given to them from* Great Britain: for remedy whereof . . . be it enacted . . . , That from and after the twenty fifth day of *December* one thousand seven hundred and thirty three, there shall be raised, levied, collected and paid, unto and for the use of his Majesty . . . , upon all rum or spirits of the produce or manufacture of any of the colonies or plantations in *America*, not in the possession or under the dominion of his Majesty . . . , which at any time or times within or during the continuance of this act, shall be imported or brought into any of the colonies or plantations in *America*, which now are or hereafter may be in the possession or under the dominion of his Majesty . . . , the sum of nine pence, money of *Great Britain*, to be paid according to the proportion and value of five shillings and six pence the ounce in silver, for every gallon thereof, and after that rate for any greater or lesser quantity: and upon all molasses or syrups of such foreign produce or manufacture as aforesaid, which shall be imported or brought into any of the said colonies or plantations of or belonging to his Majesty, the sum of six pence of like money for every gallon thereof . . . ; and upon all sugars and paneles of such foreign growth, produce or maufacture as aforesaid, which shall be imported into any of the said colonies or plantations of or

belonging to his Majesty, a duty after the rate of five shillings of like money, for every hundred weight *Avoirdupoize*, of the said sugar and paneles. . . .

II. [Such dutiable goods to be entered with the collector of customs at the place of importation, and the duty paid before landing.]

III. [The said goods, if landed before entry and payment of duty, to be forfeited, and may be seized.]

IV. And be it further enacted . . . , That from and after . . . [December 25, 1733] . . . , no sugars, paneles, syrups or molasses, of the growth, product and manufacture of any of the colonies or plantations in *America*, nor any rum or spirits of *America*, except of the growth or manufacture of his Majesty's sugar colonies there, shall be imported by any person or persons whatsoever into the kingdom of *Ireland*, but such only as shall be fairly and *bona fide* loaden and shipped in *Great Britain* in ships navigated according to the several laws now in being in that behalf, under the penalty of forfeiting all such sugar, paneles, syrups or molasses, rum or spirits, or the value thereof, together with the ship or vessel in which the same shall be imported, with all her guns, tackle, furniture, ammunition, and apparel. . . .

V. [Persons assisting in the violation of Sec. IV. to forfeit treble the value of the goods.]

VI. [A penalty of £50 for interfering with a customs officer in the discharge of his duty, and a like penalty on any officer conniving at fraudulent importation.]

VII. [Shipmasters permitting such fraudulent importation, to forfeit £100.]

VIII. [In suits, the *onus probandi* to lie on the claimer or owner.]

IX. And it is hereby further enacted . . . , That in case any sugar or paneles of the growth, produce or manufacture of any of the colonies or plantations belonging to or in the possession of his Majesty . . . , which shall have been imported into *Great Britain* after the twenty-fourth day of *June* one thousand seven hundred and thirty-three, shall at any time within one year after the importation thereof, be again exported out of *Great Britain*, and that due proof be first made, by certificate from the proper officers, of the due entry and payment of the subsidies or duties charged or payable upon the importation thereof, together with

the oath of the merchant or his agent importing and exporting the same, or in case such merchant or agent shall be one of the people called *Quakers*, by his solemn affirmation to the truth thereof, and that all other requisites shall be performed that are by law to be performed in cases where any of the said subsidies or duties are to be paid by any former statute, all the residue and remainder of the subsidy or duty, by any former act or acts of parliament granted and charged on such sugar or paneles as aforesaid, shall without any delay or reward be repaid to such merchant or merchants, who do export the same, within one month after demand thereof.

X. And it is hereby further enacted . . . , That from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-three, for every hundred weight of sugar refined in *Great Britain* . . . , which shall be exported out of this kingdom, there shall be, by virtue of this act, repaid at the custom-house to the exporter, within one month after the demand thereof, over and above the several sums of three shillings and one shilling *per* hundred, payable by two former acts of parliament, one of them made in the ninth and tenth years of the reign of his late Majesty King *William* the Third, and the other in the second and third years of the reign of her late Majesty Queen *Anne*, the further sum of two shillings, oath or solemn affirmation as aforesaid, being first made by the refiner, that the said sugar so exported, was produced from brown and muscovado sugar, and that as he verily believes, the same was imported from some of the colonies or plantations in *America* belonging to and in the possession of the crown of *Great Britain*, and that as he verily believes the duty of the said brown and muscovado sugar was duly paid at the time of the importation thereof, and that the same was duly exported. . . .

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No. 51. Treaty of Aix-la-Chapelle

October 18, 1748

THE irregular war of the Austrian Succession, known in America as King George's war, followed upon the attempt of European powers to dismember the possessions of Maria Theresa, to whom, by the terms of the Pragmatic

Sanction, the territories of the Emperor Charles VI. were to descend intact. In 1742 Maria Theresa was obliged to cede Silesia to Frederick II. of Prussia. When George II. took up the cause of Austria, France declared war against Austria and England, while Prussia allied itself with France. In 1745, however, most of the English forces were withdrawn from the continent to oppose the Pretender in Scotland. In America, where the border settlements, notwithstanding the peace of Utrecht, had continued to be the objects of French plots and Indian forays, the principal event of the war was the capture of Louisburg, on Cape Breton island, in June, 1745, by a New England force under Pepperell. The treaty of Aix-la-Chapelle, by which conquests, with the exception of Silesia, were reciprocally restored, occasioned serious disappointment and dissatisfaction in New England, where the colonies felt that they had been deprived of the just fruits of victory. The parts of the treaty relating to America are given in the extracts following.

REFERENCES. — *Text* in Chalmers's *Collection of Treaties*, I., 424–442. See Lecky's *England in the Eighteenth Century* (Amer. ed.), I., 414–466; Parkman's *Half Century of Conflict;* Winsor's *Narr. and Crit. History*, V., chap. 7.

V. All the conquests, that have been made since the commencement of the war, or which, since the conclusion of the preliminary articles, signed the 30th of April last, may have been or shall be made, either in Europe, or the East or West Indies, or in any other part of the world whatsoever, being to be restored without exception, in conformity to what was stipulated by the said preliminary articles, and by the declarations since signed; the high contracting parties engage to give orders immediately for proceeding to that restitution. . . .

* * * * * * * * * * *

IX. In consideration that, notwithstanding the reciprocal engagement taken by the eighteenth article of the preliminaries, importing that all the restitutions and cessions should be carried on equally, and should be executed at the same time, his most Christian Majesty engages, by the sixth article of the present treaty, to restore within the space of six weeks, or sooner if possible, to be reckoned from the day of the exchange of the ratifications of the present treaty, all the conquests which he has made in the Low Countries; whereas it is not possible, considering the distance of the countries, that what relates to America should be effected within the same time, or even to fix the time of its entire execution; his Britannic Majesty likewise engages on his part to send to his most Christian Majesty, immediately after the exchange of the ratifications of the present treaty, two

persons of rank and consideration, who shall remain there as hostages, till there shall be received a certain and authentic account of the restitution of Isle Royal, called Cape Breton, and of all the conquests which the arms or subjects of his Britannic Majesty may have made, before or after the signing of the preliminaries, in the East and West Indies.

Their Britannic and most Christian Majesties oblige themselves likewise to cause to be delivered, upon the exchange of the ratifications of the present treaty, the duplicates of the orders addressed to the commissaries appointed to restore and receive, respectively, whatever may have been conquered on either side in the said East and West Indies, agreeably to the second article of the preliminaries, and to the declarations of the 21st and 31st of May, and the 8th of July last, in regard to what concerns the said conquests in the East and West Indies. Provided nevertheless, that Isle Royal, called Cape Breton, shall be restored, with all the artillery and warlike stores which shall have been found therein on the day of its surrender, conformably to the inventories which have been made thereof, and in the condition that the said place was in on the said day of its surrender. As to the other restitutions, they shall take place conformably to the meaning of the second article of the preliminaries, and of the declarations and convention of the 21st and 31st of May, and the 8th of July last, in the condition in which things were on the 11th of June, N. S. in the West Indies, and on the 31st of October also, N. S. in the East Indies. And everything besides shall be re-established on the foot that they were or ought to be before the present war.

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No. 52. Albany Plan of Union

July 10, 1754

UNDER authority of a circular letter from the Lords of Trade, dated Sept. 18, 1753, to the colonial governors, a congress met at Albany, June 19, 1754, for the purpose of making an agreement or treaty with the Six Nations, and of concerting measures of defence against the French. There were present four representatives from New Hampshire, five from Massachusetts, two from Rhode Island, three from Connecticut, five from New York, four from Pennsylvania, and two from Maryland. In addition to the main object of the

conference, the commissioners from Massachusetts were authorized to "enter into articles of union and confederation for the general defence of his Majesty's subjects and interests in North America, as well in time of peace as of war." On the 24th the congress voted unanimously that a union of all the colonies was "at present absolutely necessary for their security and defence"; and a committee of one from each colony was appointed to consider the various plans submitted. Certain "short hints of a scheme," reported by the committee on the 28th, were discussed at nearly every session until July 9, when a plan of union was agreed upon, and Franklin was "desired to make a draught of it." The draft prepared by Franklin was submitted the next day, and, after debate, adopted; on the 11th the congress adjourned. The plan of union was transmitted to the assemblies of the several colonies, but failed to receive the approval of any of them; while the Lords of Trade laid it before the King without recommendation, and with no comment except that the plan was "complete in itself." According to Franklin, who was doubtless the principal author of the plan, "the crown disapproved of it, as having too much weight in the democratic part of the constitution, and every assembly as having allowed too much to prerogative; so it was totally rejected."

REFERENCES. — *Text* in *Documents relative to the Colonial History of New York*, VI., 889–891. The journal of the congress is in *ib.*, 853–891; and also, except the proceedings of July 11, in *Mass. Hist. Coll.*, Third Series, V., 5–74. The text of the plan in Franklin's *Works* (Sparks's ed.), III., 36–55, is accompanied by extended comments on the several articles; see also *ib.*, 22–36, 56–68. The best account of the congress is in Frothingham's *Rise of the Republic*, chap. 4. Frothingham discusses at length the earlier plans of union, and gives a list of important colonial congresses; see further, on this topic, bibliographical notes in Winsor's *Narr. and Crit. Hist.*, V., 611–614. Texts of a number of plans are collected in *Amer. History Leaflets*, No. 14.

PLAN of a proposed UNION of the several Colonies of Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, New York, New Jerseys, Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina, for their mutual defence and security, and for extending the British Settlements in North America.

That humble application be made for an Act of the Parliament of Great Brittain, by virtue of which, one General Government may be formed in America, including all the said Colonies, within, and under which Government each Colony may retain its present constitution, except in the particulars wherein a change [*change*] may be directed by the said Act, as hereafter follows.

That the said General Government be administered by a president General, to be appointed & supported by the Crown, and a

grand Council to be chosen by the representatives of the people of the several Colonies, meet [*met*] in their respective assemblies.

That within Months after the passing of such Act, The house of representatives in the several Assemblies, that Happen to be sitting within that time or that shall be specially for that purpose convened, may and shall chose, Members for the Grand Council in the following proportions, that is to say:

Massachusetts Bay	7.
New Hampshire	2.
Connecticut	5.
Rhode Island	2.
New York	4.
New Jerseys	3.
Pennsylvania	6.
Maryland	4.
Virginia	7.
North Carolina	4.
South Carolina	4.
	48.

Who shall meet for the present time at the City of Philadelphia in Pennsylvania, being called by the President General as soon as conveniently may be after his appointment.

That there shall be a New Election of the Members of the Grand Council every three years, and on the death or resignation of any Member, his place should be supplyed by a new choice at the next sitting of the Assembly of the Colony he represented.

That after the first three years, when the proportion of money arising out of each Colony to the General Treasury can be known, the number of Members to be chosen, for each Colony shall from time to time in all ensuing Elections be regulated by that proportion (yet so as that the Number to be chosen by any one province be not more than seven nor less than two).

That the Grand Council shall meet once in every year, and oftener if occasion require, at such time and place as they shall adjourn to at the last preceeding meeting, or as they shall be called to meet at by the President General, on any emergency, he having first obtained in writing the consent of seven of the Members to such call, and sent due and timely notice to the whole.

That the Grand Council have power to chuse their speaker, and shall neither be dissolved prorogued, nor continue sitting longer than six weeks at one time without their own consent, or the special command of the Crown.

That the Members of the Grand Council shall be allowed for their service ten shillings sterling per diem, during their Sessions or [*and*] Journey to and from the place of Meeting; twenty miles to be reckoned a days Journey.

That the Assent of the President General be requisite to all Acts of the Grand Council, and that it be his Office and duty to cause them to be carried into execution.

That the President General with the advice of the Grand Council, hold or direct all Indian Treaties in which the general interest of the Colonys may be concerned; and make peace or declare War with Indian Nations. That they make such Laws as they judge necessary for the regulating all Indian Trade. That they make all purchases from Indians for the Crown, of lands not [now] within the bounds of particular Colonies, or that shall not be within their bounds when some of them are reduced to more convenient dimensions. That they make new settlements on such purchases by granting Lands, [in the King's name] reserving a Quit rent to the Crown, for the use of the General Treasury.

That they make Laws for regulating & governing such new settlements, till the Crown shall think fit to form them into particular Governments.

That they raise and pay Soldiers, and build Forts for the defence of any of the Colonies, and equip vessels of Force to guard the Coasts and protect the Trade on the Ocean, Lakes, or great Rivers; but they shall not impress men in any Colonies without the consent of its Legislature. That for these purposes they have power to make Laws and lay and Levy such general duties, imposts or taxes, as to them shall appear most equal and just, considering the ability and other circumstances of the Inhabitants in the several Colonies, and such as may be collected with the least inconvenience to the people, rather discouraging luxury, than loading Industry with unnecessary burthens.— That they might appoint a General Treasurer and a particular Treasurer in each Government when necessary, and from time to time may order the sums in the Treasuries of each Government, into the General Treasury, or draw on them for special payments

as they find most convenient; yet no money to issue but by joint orders of the President General and Grand Council, except where sums have been appropriated to particular purposes, and the President General is previously impowered by an Act to draw for such sums.

That the General accounts shall be yearly settled and reported to the several Assemblies.

That a Quorum of the Grand Council impowered to act with the President General, do consist of twenty five Members, among whom there shall be one or more from a majority of the Colonies. That the laws made by them for the purposes aforesaid, shall not be repugnant, but as near as may be agreeable to the Laws of England, and shall be transmitted to the King in Council for approbation, as soon as may be after their passing, and if not disapproved within three years after presentation to remain in Force.

That in case of the death of the President General, the Speaker of the Grand Council for the time being shall succeed, and be vested with the same powers and authority, to continue until the King's pleasure be known.

That all Military Commission Officers, whether for land or sea service, to act under this General constitution, shall be nominated by the President General, but the aprobation of the Grand Council is to be obtained before they receive their Commissions; and all Civil Officers are to be nominated by the Grand Council, and to receive the President General's approbation before the officiate; but in case of vacancy by death or removal of any Officer Civil or Military under this constitution, The Governor of the Province in which such vacancy happens, may appoint till the pleasure of the President General and Grand Council can be known. — That the particular Military as well as Civil establishments in each Colony remain in their present State this General constitution notwithstanding. And that on sudden emergencies any Colony may defend itself, and lay the accounts of expence thence arisen, before the President General and Grand Council, who may allow and order payment of the same as far as they judge such accounts just and reasonable.

No. 53. Writ of Assistance

December 2, 1762

In 1755 a writ of assistance, granting authority to search for and seize uncustomed goods, was issued by the Superior Court of Massachusetts to Charles Paxton, surveyor of the port of Boston. Similar writs were issued in 1758 to the collectors at Salem and Falmouth, in 1759 to the surveyor-general, and the collectors at Boston and Newburyport, and in 1760 to the collectors at Boston and Salem. By law the writs continued until the demise of the Crown, and for six months thereafter. In 1761 the former writs, by reason of the death of George II., being about to expire, the surveyor-general, Thomas Lechmere, made application to the court for the grant of such writs to himself and his officers "as usual." On this application a number of merchants of Boston, and others, petitioned to be heard. The application was argued at Boston, at the February term, Jeremiah Gridley appearing for Lechmere, and James Otis and Oxenbridge Thacher for the petitioners and against the writ. Judgment was suspended in order that the court might examine the practice in England. November 18, at the second term, the case was again argued by the same counsel, with the addition of Robert Auchmuty in favor of the writ. The judges were unanimous in their opinion that the writ should be granted, as prayed for, and December 2 a writ was issued to Paxton in the form following. March 6, 1762, a bill "authorizing any judge or justice of the peace, upon information on oath by any officer of the customs, to issue a special writ or warrant of assistance, and prohibiting all others," passed the General Court; but the governor, on the advice of the members of the Superior Court, withheld his approval. Writs of assistance do not appear to have been granted elsewhere in the colonies, except in New Hampshire; they were, however, legalized by the Townshend Revenue Act of 1767 [No. 63]. General warrants were condemned in England in 1766, but general writs of assistance continued to be issued until 1819, when an order of the Board of Customs practically abolished them.

In the manuscript from which the writ following is printed, the words in brackets are interlined, and those in italics erased. The writ was drawn by Thomas Hutchinson, the chief justice.

References. — *Text* in Quincy's *Massachusetts Reports*, 418–421, where is also, pp. 395–540, an exhaustive examination of the whole subject by Justice Horace Gray. Otis's argument at the February term, as reported by John Adams, is in the latter's *Works*, II., 521–525; the second argument, in November, is in Quincy, *ut supra*, 51–57. The earlier accounts, especially those in Adams's *Works*, II., 124, note; X., 246–249, 274–276; Tudor's *Otis*, and Minot's *Massachusetts*, must be read in the light of Gray's notes, above.

Prov. of Mass. Bay } GEORGE the third by the grace of God of Great Britain France & Ireland King Defender of the faith &c[a].

SEAL

TO ALL & singular our Justices of the peace Sheriffs Constables and to all other our Officers and Subjects within our said Province and to each of you Greeting.

KNOW YE that whereas in and by an Act of Parliament made in the *thir*[four]teenth year of [the reign of] the late King Charles the second *it is declared to be* [the Officers of our Customs & their Deputies are authorized and impowered to go & enter aboard any Ship or Vessel outward or inward bound for the purposes in the said Act mentioned and it is *also* in & by the said Act further enacted & declared that it shall be] lawful [to or] for any person or persons authorized by Writ of assistants under the seal of our Court of Exchequer to take a Constable Headborough or other publick Officer inhabiting near unto the place and in the day time to enter & go into any House Shop Cellar Warehouse or Room or other place and in case of resistance to break open doors chests trunks & other package there to seize and from thence to bring any kind of goods or merchandize whatsoever prohibited & uncustomed and to put and secure the same in *his Majestys* [our] Storehouse in the port next to the place where such seizure shall be made.

AND WHEREAS in & by an Act of Parliament made in the seventh & eighth year of [the reign of the late] King William the third there is granted to the Officers for collecting and managing our revenue and inspecting the plantation trade in any of our plantations [the same powers & authority for visiting & searching of Ships & also] to enter houses or warehouses to search for and seize any prohibited or uncustomed goods as are provided for the Officers of our Customs in England by the said last mentioned Act made in the fourteenth year of [the reign of] King Charles the Second, and the like assistance is required to be given to the said Officers in the execution of their office as by the said last mentioned Act is provided for the Officers in England.

AND WHEREAS in and by an Act of our said Province of Massachusetts bay made in the eleventh year of [the reign of] the late

King William the third it is enacted & declared that our Superior Court of Judicature Court of Assize and General Goal delivery for our said Province shall have cognizance of all matters and things within our said Province as fully & amply to all intents & purposes as our Courts of King's Bench Common Pleas & Exchequer within our Kingdom of England have or ought to have.

And whereas our Commissioners for managing and causing to be levied & collected our customs subsidies and other duties have [by Commission or Deputation under their hands & seal dated at London the 22^{d} day of May in the first year of our Reign] deputed and impowered Charles Paxton Esquire to be Surveyor & Searcher of all the rates and duties arising and growing due to us at Boston in our Province aforesaid and [in & by said Commission or Deputation] have given him power to enter into [any Ship Bottom Boat or other Vessel & also into] any Shop House Warehouse Hostery or other place whatsoever to make diligent search into any trunk chest pack case truss or any other parcell or package whatsoever for any goods wares or merchandize prohibited to be imported or exported or whereof the Customs or other Duties have not been duly paid and the same to seize to our use In all things proceeding as the Law directs.

Therefore we strictly Injoin & Command you & every one of you that, all excuses apart, you & every one of you permit the said Charles Paxton according to the true intent & form of the said commission or deputation and the laws & statutes in that behalf made & provided, [as well by night as by day from time to time to enter & go on board any Ship Boat or other Vessel riding lying or being within or coming to the said port of Boston or any Places or Creeks thereunto appertaining such Ship Boat or Vessel then & there found to search & oversee and the persons therein being strictly to examine touching the premises aforesaid & also *according to the form effect and true intent of the said commission or deputation*] in the day time to enter & go into the vaults cellars warehouses shops & other places where any prohibited goods wares or merchandizes or any goods wares or merchandizes for which the customs or other duties shall not have been duly & truly satisfied and paid lye concealed or are suspected to be concealed, according to the true intent of the law to inspect & oversee & search for the said goods wares &

merchandize, And further to do and execute all things which of right and according to the laws & statutes in this behalf shall be to be done. And we further strictly INJOIN & COMMAND you and every one of you that to the said Charles Paxton Esqr you & every one of you from time to time be aiding assisting & helping in the execution of the premises as is meet. And this you or any of [you] in no wise omit at your perils. WITNESS Thomas Hutchinson Esq at Boston the day of December in the Second year of our Reign Annoque Dom 1761.

By order of Court
N. H.* Cler.

No. 54. Treaty of Paris

February 10, 1763

THE Ohio and Mississippi valleys, claimed by the French in right of exploration and colonization, were also claimed by the English under early colonial grants and charters; and these conflicting claims the boundary commissioners, appointed under the treaty of Aix-la-Chapelle, had been unable to reconcile. The Seven Years' war, known in America as the French and Indian war, began two years before the declaration of war by England against France formally opened hostilities in Europe. Washington's unsuccessful expedition against Fort Duquesne, in 1754, was followed in 1755 by the defeat of Braddock, and the failure of the contemplated attack upon Canada; but some French forts in Nova Scotia were taken, and the Acadians deported. The campaigns of 1756 and 1757 were also without substantial results for the English. The energy of Pitt, whom Newcastle was obliged, in June, 1757, to receive into the ministry as secretary of state, turned the tide. In 1758, Louisburg, Niagara and Fort Duquesne were taken; in September, 1759, Quebec fell; and with the surrender of Montreal, in 1760, the French power in America came to an end. The war in Europe went on for three years longer. In June, 1761, at the instance of France, negotiations for peace were opened; but the signature of the "family compact" between France and Spain, in August, caused them to be broken off. Pitt urged immediate war with Spain; but his views were not supported by the ministry, and he resigned. War against Spain was, however, declared in 1762, and English forces took Havana and Manila. In September, negotiations were resumed; on November 3, preliminaries of peace were signed at Fontainebleau; and on February 10, 1763, the treaty was concluded at Paris. The articles relating to America are given in the extracts following. In compensation for the loss of Florida, Spain received from France so much of Louisiana as lay west of the Mississippi river, including both sides of the river at its mouth.

REFERENCES. — *Text* in Chalmers's *Collection of Treaties*, I., 467-483

* Nathaniel Hatch, one of the clerks of court.

On the war, see Mahon's *History of England from the Peace of Utrecht*, II., chaps. 32–38; Lecky's *England in the Eighteenth Century*, II., chap. 8; III., chap. 10; Parkman's *Montcalm and Wolfe;* Winsor's *Narr. and Crit. Hist.*, V., chap. 8.

IV. His most Christian Majesty renounces all pretensions, which he has heretofore formed, or might form, to Nova Scotia or Acadia, in all its parts, and guaranties the whole of it, and with all its dependencies, to the King of Great Britain: moreover, his most Christian Majesty cedes and guaranties to his said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the gulph and river St. Laurence, and, in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights, acquired by treaty or otherwise, which the most Christian King, and the crown of France, have had till now over the said countries, islands, lands, places, coasts, and their inhabitants, so that the most Christian King cedes and makes over the whole to the said King, and to the crown of Great Britain, and that in the most ample manner and form, without restriction, and without any liberty to depart from the said cession and guaranty, under any pretence, or to disturb Great Britain in the possessions above-mentioned. His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada: he will consequently give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannic Majesty further agrees, that the French inhabitants, or others who had been subjects of the most Christian King in Canada, may retire, with all safety and freedom, wherever they shall think proper, and may sell their estates, provided it be to subjects of his Britannic Majesty, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions: the term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty.

V. The subjects of France shall have the liberty of fishing and

drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in the XIIIth article of the treaty of Utrecht; which article is renewed and confirmed by the present treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and in the gulph of St. Laurence:) and his Britannic Majesty consents to leave to the subjects of the most Christian King the liberty of fishing in the gulph St. Laurence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the said gulph of St. Laurence. And as to what relates to the fishery on the coasts of the island of Cape Breton out of the said gulph, the subjects of the most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and every where else out of the said gulph, shall remain on the foot of former treaties.

VI. The King of Great Britain cedes the islands of St. Pierre and Miquelon, in full right, to his most Christian Majesty, to serve as a shelter to the French fishermen: and his said most Christian Majesty engages not to fortify the said islands; to erect no building upon them, but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police.

VII. In order to re-establish peace on solid and durable foundations, and to remove for ever all subject of dispute with regard to the limits of the British and French territories on the continent of America; it is agreed, that, for the future, the confines between the dominions of his Britannic Majesty, and those of his most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, to the sea; and for this purpose, the most Christian King cedes in full right, and guaranties to his Britannic Majesty, the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans, and the island on which it is situated, which shall remain to France;

provided that the navigation of the river Mississippi shall be equally free, as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expresly that part which is between the said island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth. It is further stipulated, that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations, inserted in the IVth article, in favour of the inhabitants of Canada, shall also take place with regard to the inhabitants of the countries ceded by this article.

VIII. The King of Great Britain shall restore to France the islands of Guadeloupe, of Marie Galante, of Desirade, of Martinico, and of Belleisle; and the fortresses of these islands shall be restored in the same condition they were in when they were conquered by the British arms; provided that his Britannic Majesty's subjects, who shall have settled in the said islands, or those who shall have any commercial affairs to settle there, or in the other places restored to France by the present treaty, shall have liberty to sell their lands and their estates, to settle their affairs, to recover their debts, and to bring away their effects, as well as their persons, on board vessels, which they shall be permitted to send to the said islands, and other places restored as above, and which shall serve for this use only, without being restrained on account of their religion, or under any other pretence whatsoever, except that of debts or of criminal prosecutions: and for this purpose, the term of eighteen months is allowed to his Britannic Majesty's subjects, to be computed from the day of the exchange of the ratifications of the present treaty; but, as the liberty, granted to his Britannic Majesty's subjects, to bring away their persons and their effects, in vessels of their nation, may be liable to abuses, if precautions were not taken to prevent them; it has been expresly agreed between his Britannic Majesty and his most Christian Majesty, that the number of English vessels, which shall have leave to go to the said islands and places restored to France, shall be limited, as well as the number of tons of each one; that they shall go in ballast; shall set sail at a fixed time; and shall make one voyage only, all the effects, belonging to the English, being to be embarked at the same time. It has been further agreed, that his most Christian

Majesty shall cause the necessary passports to be given to the said vessels; that, for the greater security, it shall be allowed to place two French clerks, or guards, in each of the said vessels, which shall be visited in the landing places and ports of the said islands, and places, restored to France, and that the merchandise, which shall be found therein, shall be confiscated.

IX. The most Christian King cedes and guaranties to his Britannic Majesty, in full right, the islands of Grenada, and of the Grenadines, with the same stipulations in favour of the inhabitants of this colony, inserted in the IVth article for those of Canada: and the partition of the islands, called Neutral, is agreed and fixed, so that those of St. Vincent, Dominica, and Tobago, shall remain in full right to Great Britain, and that of St. Lucia shall be delivered to France, to enjoy the same likewise in full right; and the high contracting parties guaranty the partition so stipulated.

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XVII. His Britannic Majesty shall cause to be demolished all the fortifications which his subjects shall have erected in the Bay of Honduras, and other places of the territory of Spain in that part of the world, four months after the ratification of the present treaty: and his Catholic Majesty shall not permit his Britannic Majesty's subjects, or their workmen, to be disturbed or molested, under any pretence whatsoever, in the said places, in their occupation of cutting, loading, and carrying away logwood: and for this purpose, they may build without hinderance, and occupy without interruption, the houses and magazines which are necessary for them, for their families, and for their effects: and his Catholic Majesty assures to them, by this article, the full enjoyment of those advantages, and powers, on the Spanish coasts and territories, as above stipulated, immediately after the ratification of the present treaty.

XVIII. His Catholic Majesty desists, as well for himself, as for his successors, from all pretension, which he may have formed, in favour of the Guipuscoans, and other his subjects, to the right of fishing in the neighbourhood of the island of Newfoundland.

XIX. The King of Great Britain shall restore to Spain all the territory, which he has conquered in the island of Cuba, with the fortress of the Havana, and this fortress, as well as all the other

fortresses of the said island, shall be restored in the same condition they were in when conquered by his Britannic Majesty's arms; [with conditions and restrictions, as to persons and property, similar to those in Art. VIII.]

XX. In consequence of the restitution stipulated in the preceding article, his Catholic Majesty cedes and guaranties, in full right, to his Britannic Majesty, Florida, with Fort St. Augustin, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the east, or to the south-east, of the river Mississippi; and, in general, every thing that depends on the said countries, and lands, with the sovereignty, property, possession, and all rights, acquired by treaties or otherwise, which the Catholic King, and the crown of Spain, have had, till now, over the said countries, lands, places, and their inhabitants; so that the Catholic King cedes and makes over the whole to the said King, and to the crown of Great Britain, and that in the most ample manner and form. His Britannic Majesty agrees, on his side, to grant to the inhabitants of the countries, above ceded, the liberty of the Catholic religion: he will consequently give the most express and the most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit: his Britannic Majesty further agrees, that the Spanish inhabitants, or others, who had been subjects of the Catholic King in the said countries, may retire, with all safety and freedom, wherever they think proper; and may sell their estates, provided it be to his Britannic Majesty's subjects, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions: the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty. It is moreover stipulated, that his Catholic Majesty shall have power to cause all the effects, that may belong to him, to be brought away, whether it be artillery or other things.

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No. 55. Royal Proclamation concerning America

October 7, 1763

THE principal objects of the royal proclamation of 1763 were, to provide for the government of the British possessions in America which had been acquired by the treaty of Paris; to define certain interior boundaries; and to regulate trade and intercourse with the Indians.

REFERENCES. — *Text* in the *Annual Register* (1763), 208–213.

WHEREAS we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation; we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands, ceded and confirmed to us by the said treaty, four distinct and separate governments, stiled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz.

First, the government of Quebec, bounded on the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the South end of the lake Nipissim; from whence the said line, crossing the river St. Lawrence and the lake Champlain in 45 degrees of North latitude, passes along the High Lands, which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea; and also along the North coast of the Bayes des Chaleurs, and the coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the West end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly, The government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola river;

to the Northward, by a line drawn from that part of the said river where the Catahoochee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean; and to the East and South by the Atlantic Ocean, and the Gulph of Florida, including all islands within six leagues of the sea coast.

Thirdly, The government of West Florida, bounded to the Southward by the Gulph of Mexico, including all islands within six leagues of the coast from the river Apalachicola to lake Pontchartrain; to the Westward by the said lake, the lake Maurepas, and the river Mississippi; to the Northward, by a line drawn due East from that part of the river Mississippi which lies in thirty-one degrees North latitude, to the river Apalachicola, or Catahoochee; and to the Eastward by the said river.

Fourthly, The government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominico, St. Vincent, and Tobago.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our said privy council, to put all that coast, from the river St. John's to Hudson's Streights, together with the islands of Anticosti and Madelane, and all other smaller islands lying upon the said coast, under the care and inspection of our governor of Newfoundland.

We have also, with the advice of our privy council, thought fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia.

We have also, with the advice of our privy council aforesaid, annexed to our province of Georgia, all the lands lying between the rivers Attamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are, and shall become inhabitants thereof; we have thought fit to publish and declare, by this our proclamation, that we have, in the letters patent under our great seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said

colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils, and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England: for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our privy council.

We have also thought fit, with the advice of our privy council as aforesaid, to give unto the governors and councils of our said three new colonies upon the continent, full power and authority to settle and agree with the inhabitants of our said new colonies, or to any other person who shall resort thereto, for such lands, tenements, and hereditaments, as are now, or hereafter shall be, in our power to dispose of, and them to grant to any such person or persons, upon such terms, and under such moderate quit rents, services, and acknowledgments, as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

And whereas we are desirous, upon all occasions, to testify our

royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same, we do hereby command and impower our governors of our said three new colonies, and other our governors of our several provinces on the continent of North America, to grant, without fee or reward, to such reduced officers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land, subject, at the expiration of ten years, to the same quit rents as other lands are subject to in the province within which they are granted, as also subject to the same conditions of cultivation and improvement, viz.

To every person having the rank of a field officer, 5000 acres.

To every captain, 3000 acres.

To every subaltern or staff officer, 2000 acres.

To every non-commission officer, 200 acres.

To every private man 50 acres.

We do likewise authorise and require the governors and commanders in chief of all our said colonies upon the continent of North America to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy of like rank, as served on board our ships of war in North America at the times of the reduction of Louisbourg and Quebec in the late war, and who shall personally apply to our respective governors for such grants.

And whereas it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds; we do therefore, with the advice of our privy council, declare it to be our royal will and pleasure, that no governor, or commander in chief, in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions; as also that no governor or commander in chief of our other colonies or plantations in America, do presume for the present, and

until our further pleasure be known, to grant warrant of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west; or upon any lands whatever, which not having been ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and licence for that purpose first obtained.

And we do further strictly enjoin and require all persons whatever, who have either willfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands, which not having been ceded to, or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our privy council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement; but that if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor or commander in chief of our

colony respectively within which they shall lie: and in case they shall lie within the limits of any proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose: and we do, by the advice of our privy council, declare and enjoin, that the trade with the said Indians shall be free and open to all our subjects whatever, provided that every person who may incline to trade with the said Indians, do take out a licence for carrying on such trade, from the governor or commander in chief of any of our colonies respectively, where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries, to be appointed for this purpose, to direct and appoint for the benefit of the said trade: and we do hereby authorise, enjoin, and require the governors and commanders in chief of all our colonies respectively, as well those under our immediate government, as those under the government and direction of proprietaries, to grant such licences without fee or reward, taking especial care to insert therein a condition that such licence shall be void, and the security forfeited, in case the person, to whom the same is granted, shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of Indian affairs within the territories reserved, as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who standing charged with treasons, misprisions of treasons, murders, or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

No. 56. Sugar Act

April 5, 1764

ALTHOUGH the Seven Years' war had left Great Britain with a heavy debt, the expense of protecting the English possessions in America seemed likely to increase rather than diminish. The direct advantages of the

expulsion of the French had accrued mainly to the colonies, and it seemed proper to the ministry that a revenue should be raised in America for the support of the military establishment there. In connection with the plan for a colonial army, it was the desire to provide stronger support for the representatives of the Crown, and to put an end to the widespread violation of the acts of trade. "February 23, 1763, Charles Townshend became first lord of trade, with the administration of the colonies, and he inaugurated, with the support of the ministry, the new system of colonial government. It was announced by authority that there were to be no more requisitions from the king to the colonial assemblies for supplies, but that the colonies were to be taxed by act of Parliament. Colonial governors and judges were to be paid by the Crown; they were to be supported by a standing army of twenty regiments; and all the expenses of this force were to be paid by parliamentary taxation" (Johnston). Grenville, who succeeded Bute in April as prime minister, was committed to this policy, and in May the Lords of Trade were called upon to submit a plan of colonial taxation. The duties prescribed by the Molasses Act of 1733 [No. 50] were prohibitory, and the statute itself had remained inoperative. To provide in part for the intended revenue, the act of April 5, 1764, known as the Sugar Act, was now passed, imposing duties upon certain colonial imports and exports. The Molasses Act was also made perpetual, but with a reduction by one-half of the duty on molasses and sugar.

The extracts following give the important sections of the act, omitting minor technical and administrative provisions.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVI., 33–52. The act is cited as 4 Geo. III., c. 15. On the act, see especially Beer's *Commercial Policy of England*, chap. 8, and references there cited.

An act for granting certain duties in the British *colonies and plantations in* America; *for continuing, amending, and making perpetual, an act passed in the sixth year of the reign of his late Majesty King* George *the Second,* (*intituled,* An act for the better securing and encouraging the trade of his Majesty's sugar colonies in *America;*) *for applying the produce of such duties, and of the duties to arise by virtue of the said act, towards defraying the expences of defending, protecting, and securing the said colonies and plantations; for explaining an act made in the twenty fifth year of the reign of King* Charles *the Second,* (*intituled,* An act for the encouragement of the *Greenland* and *Eastland* trades, and for the better securing the plantation trade;) *and for altering and disallowing several drawbacks on exports from this kingdom, and more effectually preventing the clandestine conveyance of goods to and from the said colonies and plantations, and improving and securing the trade between the same and Great Britain.*

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WHEREAS *it is expedient that new provisions and regulations should be established for improving the revenue of this Kingdom, and for extending and securing the navigation and commerce between* Great Britain *and your Majesty's dominions in* America, *which, by the peace, have been so happily enlarged: and whereas it is just and necessary, that a revenue be raised, in your Majesty's said dominions in* America, *for defraying the expences of defending, protecting, and securing the same; we, your Majesty's most dutiful and loyal subjects, the commons of* Great Britain, *in parliament assembled, being desirous to make some provision, in this present session of parliament, towards raising the said revenue in* America, *have resolved to give and grant unto your Majesty the several rates and duties herein after-mentioned;* and do most humbly beseech your Majesty, that it may be enacted; and be it enacted . . . , That from and after the twenty ninth day of *September*, one thousand seven hundred and sixty four, there shall be raised, levied, collected, and paid, unto his Majesty . . . , for and upon all white or clayed sugars of the produce or manufacture of any colony or plantation in *America*, not under the dominion of his Majesty . . . ; for and upon indico, and coffee of foreign produce or manufacture; for and upon all wines (except *French* wine;) for and upon all wrought silks, bengals, and stuffs, mixed with silk or herba, of the manufacture of *Persia*, *China*, or *East India*, and all callico painted, dyed, printed, or stained there; and for and upon all foreign linen cloth called *Cambrick* and *French* Lawns, which shall be imported or brought into any colony or plantation in *America*, which now is, or hereafter may be, under the dominion of his Majesty . . . , the several rates and duties following; that is to say,

For every hundred weight avoirdupois of such foreign white or clayed sugars, one pound two shillings, over and above all other duties imposed by any former act of parliament.

For every pound weight avoirdupois of such foreign indico, six pence.

For every hundred weight avoirdupois of such foreign coffee, which shall be imported from any place except *Great Britain*, two pounds, nineteen shillings, and nine pence.

For every ton of wine of the growth of the *Madeiras*, or of any other island or place from whence such wine may be lawfully imported, and which shall be so imported from such islands or places, the sum of seven pounds.

For every ton of *Portugal*, *Spanish*, or any other wine (except *French* wine) imported from *Great Britain*, the sum of ten shillings.

For every pound weight avoirdupois of wrought silks, bengals, and stuffs, mixed with silk or herba, of the manufacture of *Persia*, *China*, or *East India*, imported from *Great Britain*, two shillings.

For every piece of callico painted, dyed, printed, or stained, in *Persia*, *China*, or *East India*, imported from *Great Britain*, two shillings and six pence.

For every piece of foreign linen cloth, called *Cambrick*, imported from *Great Britain*, three shillings.

For every piece of *French* lawn imported from *Great Britain* three shillings. . . .

II. And it is hereby further enacted . . . That from and after . . . [September 29, 1764] . . . there shall also be raised, levied, collected, and paid, unto his Majesty . . . , for and upon all coffee and pimento of the growth and produce of any *British* colony or plantation in *America*, which shall be there laden on board any *British* ship or vessel, to be carried out from thence or any other place whatsoever, except *Great Britain*, the several rates and duties following; that is to say,

III. For every hundred weight avoirdupois of such *British* coffee, seven shillings.

For every pound weight avoirdupois of such *British* pimento, one halfpenny. . . .

[Sections V. and VI. continue the Molasses Act in force until Sept. 30, 1764, after which it is to be perpetual, subject to the changes in this present act.]

VI. And be it further enacted . . . , That in lieu and instead of the rate and duty imposed by the said act upon melasses and syrups, there shall, from and after . . . [September 29, 1764] . . . , be raised, levied, collected, and paid, unto his Majesty . . . , for and upon every gallon of melasses or syrups, being the growth, produce, or manufacture, of any colony or plantation in *America*, not under the dominion of his Majesty . . . , which shall be imported or brought into any colony or plantation in *America*, which now is, or hereafter may be, under the dominion of his Majesty . . . , the sum of three pence.

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XI. And it is hereby further enacted . . . , That all the monies

which, from and after . . . [September 29, 1764] . . . , shall arise by the several rates and duties herein before granted; and also by the duties which, from and after the said [date], shall be raised upon sugars and paneles, by virtue of the said act made in the sixth year of the reign of his said late Majesty King *George* the Second (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same) shall be paid into the receipt of his Majesty's Exchequer, and shall be entered separate and apart from all other monies paid or payable to his Majesty . . . : and shall be there reserved, to be, from time to time, disposed of by parliament, towards defraying the necessary expences of defending, protecting, and securing, the *British* colonies and plantations in *America*.

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XVIII. And be it further enacted . . . , That from and after . . . [September 29, 1764] . . . , no rum or spirits of the produce or manufacture of any of the colonies or plantations in *America*, not in the possession or under the dominion of his Majesty . . . , shall be imported or brought into any of the colonies or plantations in *America* which now are, or hereafter may be, in the possession or under the dominion of his Majesty . . . , upon forfeiture of all such rum or spirits, together with the ship or vessel in which the same shall be imported, with the tackle, apparel, and furniture thereof; to be seized by any officer or officers of his Majesty's customs, and prosecuted in such manner and form as herein after is expressed; any law, custom, or usage, to the contrary notwithstanding.

XIX. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , nothing in the before-recited act made in the sixth year of the reign of his late Majesty King *George* the Second, or any other act of parliament, shall extend, or be construed to extend, to give liberty to any person or persons whatsoever to import into the kingdom of *Ireland*, any sort of sugars, but such only as shall be fairly and *bona fide* loaden and shipped in *Great Britain*, and carried directly from thence in ships navigated according to law.

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XXIII. And whereas by an act of parliament made in the twelfth year of the reign of King *Charles* the Second, intituled,

An act for encouraging and increasing of shipping and navigation, and several subsequent acts of parliament which are now in force, it is, amongst other things, directed, that for every ship or vessel that shall load any commodities, in those acts particularly enumerated, at any *British* plantation, being the growth, product, or maufacture thereof, bonds shall be given with one surety, to the value of one thousand pounds, if the ship be of less burthen than one hundred tons, and of the sum of two thousand pounds; if the ship be of greater burthen, that the same commodities shall be brought by such ship or vessel to some other *British* plantation, or to some port in *Great Britain;* notwithstanding which, there is great reason to apprehend such goods are frequently carried to foreign parts, and landed there: and whereas great quantities of foreign molasses and syrups are clandestinely run on shore in the *British* colonies, to the prejudice of the revenue, and the great detriment of the trade of this kingdom, and it's *American* plantations; to remedy which practices for the future, be it further enacted . . . , That from and after . . . [September 29, 1764] . . . , bond and security, in the like penalty, shall also be given to the collector or other principal officer of the customs at any port or place in any of the *British American* colonies or plantations, with one surety besides the master of every ship or vessel that shall lade or take on board there any goods not particularly enumerated in the said acts, being the product or manufacture of any of the said colonies or plantations, with condition, that, in case any molasses or syrups, being the produce of any of the plantations not under the dominion of his Majesty . . . , shall be laden on board such ship or vessel, the same shall (the danger of the seas and enemies excepted) be brought, without fraud or wilful diminution, by the said ship or vessel to some of his Majesty's colonies or plantations in *America*, or to some port in *Great Britain;* and that the master or other person having the charge of such ship or vessel, shall, immediately upon his arrival at every port or place in *Great Britain*, or in the *British American* colonies and plantations, make a just and true report of all the goods laden on board such ship or vessel under their true and proper denominations; and if any such non-enumerated goods shall be laden on board any such ship or vessel before such bond shall be given, the goods so laden together with the ship or vessel and her furniture shall be forfeited, and shall and may be seized

by any officer of the customs, and prosecuted in the manner herein after directed.

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XXV. And it is hereby further enacted, That if any *British* ship or vessel laden, as aforesaid, with any goods of the produce or manufacture of any *British* colony or plantation in *America*, or having on board any molasses or syrups the produce of any foreign colony or plantation, shall be discovered by any officer of his Majesty's customs within two leagues of the shore of any *British* colony or plantation in *America*, and the master or person taking charge of such ship or vessel shall not produce a certificate that bond has been given, pursuant to the directions of this or any other act of parliament, as the case may require; or if he shall not produce such certificate to the collector or other chief officer of the customs where he shall arrive, either in *Great Britain* or any *British American* colony or plantation, such ship or vessel, with her tackle, apparel, and furniture, and all the goods therein laden, shall be forfeited, and shall and may be seized and prosecuted as herein after is directed.

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XXVII. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , all coffee, pimento, cocoa nuts, whale fins, raw silk, hides, and skins, pot and pearl ashes, of the growth, production, or manufacture, of any *British* colony or plantation in *America*, shall be imported directly from thence into this kingdom, or some other *British* colony or plantation, under the like securities, penalties, and forfeitures, as are particularly mentioned in two acts of parliament made in the twelfth and twenty fifth years of the reign of King *Charles* the Second, the former intituled, *An act for the encouraging and increasing of shipping and navigation*, and the latter intituled, *An act for the encouragement of the* Greenland *and eastland trades, and for the better securing the plantation trade*, or either of them, with respect to the goods in those acts particularly enumerated; any law, custom, or usage, to the contrary notwithstanding.

XXVIII. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , no iron, nor any sort of wood, commonly called *Lumber*, as specified in an act passed in the eighth year of the reign of King *George* the First, intituled,

An act for giving further encouragement for the importation of naval stores, and for other purposes therein mentioned, of the growth, production, or manufacture, of any *British* colony or plantation in *America,* shall be there loaden on board any ship or vessel to be carried from thence, until sufficient bond shall be given, with one surety besides the master of the vessel, to the collector or other principal officer of the customs at the loading port, in a penalty of double the value of the goods, with condition, that the said goods shall not be landed in any part of *Europe* except *Great Britain;* . . .

XXIX. And, for the better preventing frauds in the importation or exportation of goods that are liable to the payment of duties, or are prohibited, in the *British* colonies or plantations in *America,* it is further enacted . . . , That from and after . . . [September 29, 1764] . . . , no goods, wares, or merchandizes, of any kind whatsoever, shall be shipped or laden on board any ship or vessel in any of the *British* colonies or plantations in *America,* to be carried from thence to any other *British* colony or plantation, without a sufferance or warrant first had and obtained from the collector or other proper officer of the customs at the port or place where such goods shall be intended to be put on Board. . . .

XXX. And whereas *British* vessels arriving from foreign parts at several of the out ports of this kingdom, fully or in part laden abroad with goods that are pretended to be destined to some foreign plantation, do frequently take on board some small parcels of goods in this kingdom which are entered outwards for some *British* colony or plantation, and a cocket and clearance thereupon granted for such goods, under cover of which the whole cargoes of such vessels are clandestinely landed in the *British American* dominions, contrary to several acts of parliament now in force, to the great prejudice of the trade and revenue of this kingdom; for remedy whereof, be it further enacted . . . , That from and after the first day of *May* one thousand seven hundred and sixty four, no ship or vessel shall, upon any pretence whatsoever, be cleared outwards from any port of this kingdom, for any land, island, plantation, colony, territory, or place to his Majesty belonging, or which shall hereafter belong unto or be in the possession or under the dominion of his Majesty . . . , in *America,* unless the whole and entire cargo of such ship

or vessel shall be *bona fide*, and without fraud, laden and shipped in this kingdom. . . .

XXXI. Provided always, That this act shall not extend, nor be construed to extend, to forfeit, for want of such cocket or clearance, any salt laden in *Europe* for the fisheries in *New England*, *Newfoundland*, *Pensylvania*, *New York*, and *Nova Scotia*, or any other place to which salt is or shall be allowed by law to be carried; wines laden in the *Madeiras*, of the growth thereof; and wines of the growth of the *Western Islands*, or *Azores*, and laden there; nor any horses, victuals, or linen cloth, of and from *Ireland*, which may be laden on board such ships or vessels.

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XXXV. And, in order to prevent any illicit trade or commerce between his Majesty's subjects in *America*, and the subjects of the crown of *France* in the islands of *Saint Pierre* and *Miquelon*, it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , if any *British* ship or vessel shall be found standing into, or coming out from, either of those islands, or hovering or at anchor within two leagues of the coasts thereof, or shall be discovered to have taken any goods or merchandizes on board at either of them, or to have been there for that purpose; such ship or vessel, and all the goods so taken on board there, shall be forfeited and lost, and shall and may be seized and prosecuted by any officer of his Majesty's customs; and the master or other person having the charge of such ship or vessel, and every person concerned in taking any such goods on board, shall forfeit treble the value thereof.

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XXXVII. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , if any goods or merchandizes whatsoever, liable to the payment of duties in any *British* colony or plantation in *America* by this or any other act of parliament, shall be loaden on board any ship or vessel outward bound, or shall be unshipped or landed from any ship or vessel inward bound, before the respective duties due thereon are paid, agreeable to law; or if any prohibited goods whatsoever shall be imported into, or exported out of, any of the said colonies or plantations, contrary to the true intent and meaning of this or any other act of parliament; every person who shall be

assisting, or otherwise concerned, either in the loading outwards, or in the unshipping or landing inwards, such goods, or to whose hands the same shall knowingly come after the loading or unshipping thereof, shall, for each and every offence, forfeit treble the value of such goods, to be estimated and computed according to the best price that each respective commodity bears at the place where such offence was committed; and all the boats, horses, cattle, and other carriages whatsoever, made use of in the loading, landing, removing, carriage, or conveyance, of any of the aforesaid goods, shall also be forfeited and lost, and shall and may be seized and prosecuted, by any officer of his Majesty's customs, as herein after mentioned.

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No. 57. Stamp Act

March 22, 1765

A stamp act formed part of the plan of colonial taxation outlined by Townshend in 1763, and adopted by Grenville when the latter became prime minister (see note to No. 56). In September, 1763, the commissioners of stamp duties were requested to draft provisions for the extension of those duties to America. In March, 1764, shortly before the passage of the Sugar Act, Grenville announced his intention of introducing, at the next session, a stamp bill; and the plan received the approval of Parliament. In the meantime, opportunity was given the colonial agents to communicate with their respective governments, in order that the colonies, in case the stamp tax were deemed objectionable, might agree upon some other method of raising the desired revenue. The prospect of parliamentary taxation was viewed with alarm in America, where a stricter enforcement of the acts of trade was already thought to threaten disaster to commerce. When, however, the subject was again brought before Parliament by Grenville, in February, 1765, the colonial agents, although remonstrating against the proposed measure, were unable to recommend any substitute; while petitions from the colonial assemblies, and from London merchants interested in the American trade, were refused consideration, under a rule of the House of Commons forbidding the reception of petitions on money bills. There was little opposition in Parliament, and the bill passed the Commons by a vote of 205 to 49, and the Lords without a division. George III. was at the time insane, and the act received the royal assent, March 22, by commission.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVI., 179–204. The act is cited as 5 Geo. III., c. 12. The proceedings in Parliament may be followed in the *Parliamentary History*, XV., XVI., and the *Annual Register* (1765). The fullest account of the debates is in Bancroft's *United States* (ed. 1852), V. Contrasted English and American views are presented in Froth-

ingham's *Rise of the Republic*, chap. 5; Lecky's *England in the Eighteenth Century* (Amer. ed.), III., 333–375; Mahon's *England*, chap. 43, 45. Bradford's *Massachusetts State Papers*, 33–92, gives the addresses and messages of Governor Bernard, and the answers of the House of Representatives, of that colony, in relation to the act and its repeal. The best-known contemporary expression of American opinion, called out by the Sugar Act and the proposal of a stamp act, is Otis's *Rights of the British Colonies;* for a more moderate statement, see Stephen Hopkins's *Rights of the Colonies Examined* (in R. I. Col. Records, VI.).

An act for granting and applying certain stamp duties, and other duties, in the British *colonies and plantations in* America, *towards further defraying the expences of defending, protecting, and securing the same; and for amending such parts of the several acts of parliament relating to the trade and revenues of the said colonies and plantations, as direct the manner of determining and recovering the penalties and forfeitures therein mentioned.*

WHEREAS by an act made in the last session of parliament, several duties were granted, continued, and appropriated, towards defraying the expences of defending, protecting, and securing, the British *colonies and plantations in* America: *and whereas it is just and necessary, that provision be made for raising a further revenue within your Majesty's dominions in* America, *towards defraying the said expences:* we, your Majesty's most dutiful and loyal subjects, the commons of *Great Britain* in parliament assembled, have therefore resolved to give and grant unto your Majesty the several rates and duties here in after mentioned; and do most humbly beseech your Majesty that it may be enacted, and be it enacted . . . , That from and after the first day of *November*, one thousand seven hundred and sixty five, there shall be raised, levied, collected, and paid unto his Majesty, his heirs, and successors, throughout the colonies and plantations in *America* which now are, or hereafter may be, under the dominion of his Majesty, his heirs and successors,

For every skin or piece of vellum or parchment, or sheet or piece of paper, on which shall be ingrossed, written or printed, any declaration, plea, replication, rejoinder, demurrer, or other pleading, or any copy thereof, in any court of law within the *British* colonies and plantations in *America*, a stamp duty of three pence.

For every skin . . . on which shall be ingrossed . . . any special bail and appearance upon such bail in any such court, a stamp duty of two shillings.

For every skin . . . on which shall be ingrossed . . . any petition, bill, answer, claim, plea, replication, rejoinder, demurrer, or other pleading in any court of chancery or equity within the said colonies and plantations, a stamp duty of one shilling and six pence.

[For every copy of such petition, &c., three pence.]

For every skin . . . on which shall be ingrossed . . . any monition, libel, answer, allegation, inventory, or renunciation in ecclesiastical matters in any court of probate, court of the ordinary, or other court exercising ecclesiastical jurisdiction within the said colonies and plantations, a stamp duty of one shilling.

For every skin . . . on which shall be ingrossed . . . any copy of any will (other than the probate thereof) monition, libel, answer, allegation, inventory, or renunciation in ecclesiastical matters in any such court, a stamp duty of six pence.

For every skin . . . on which shall be ingrossed . . . any donation, presentation, collation, or institution of or to any benefice, or any writ or instrument for the like purpose, or any register, entry, testimonial, or certificate of any degree taken in any university, academy, college, or seminary of learning, within the said colonies and plantations, a stamp duty of two pounds.

For every skin . . . on which shall be ingrossed . . . any monition, libel, claim, answer, allegation, information, letter of request, execution, renunciation, inventory, or other pleading, in any admiralty court within the said colonies and plantations, a stamp duty of one shilling.

[For every copy of such monition, &c., six pence.]

For every skin . . . on which shall be ingrossed . . . any appeal, writ of error, writ of dower, *Ad quod damnum*, certiorari, statute merchant, statute staple, attestation, or certificate, by any officer, or exemplification of any record or proceeding in any court whatsoever within the said colonies and plantations (except appeals, writs of error, certiorari, attestations, certificates, and exemplifications, for or relating to the removal of any proceedings from before a single justice of the peace) a stamp duty of ten shillings.

For every skin . . . on which shall be ingrossed . . . any writ

of covenant for levying of fines, writ of entry for suffering a common recovery, or attachment issuing out of, or returnable into, any court within the said colonies and plantations, a stamp duty of five shillings.

For every skin . . . on which shall be ingrossed . . . any judgement, decree, sentence, or dismission, or any record of *Nisi Prius* or *Postea*, in any court within the said colonies and plantations, a stamp duty of four shillings.

For every skin . . . on which shall be ingrossed . . . any affidavit, common bail or appearance, interrogatory deposition, rule, order, or warrant of any court, or any *Dedimus Potestatem*, *Capias*, *Subpœna*, summons, compulsory citation, commission, recognizance, or any other writ, process, or mandate, issuing out of, or returnable into, any court, or any office belonging thereto, or any other proceeding therein whatsoever, or any copy thereof, or of any record not herein before charged, within the said colonies and plantations (except warrants relating to criminal matters, and proceedings thereon or relating thereto) a stamp duty of one shilling.

For every skin . . . on which shall be ingrossed . . . any licence, appointment, or admission of any counsellor, sollicitor, attorney, advocate, or proctor, to practise in any court, or of any notary within the said colonies and plantations, a stamp duty of ten pounds.

For every skin . . . on which shall be ingrossed . . . any note or bill of lading, which shall be signed for any kind of goods, wares, or merchandize, to be exported from, or any cocket or clearance granted within the said colonies and plantations, a stamp duty of four pence.

For every skin . . . on which shall be ingrossed . . . letters of mart, or commission for private ships of war, within the said colonies and plantations, a stamp duty of twenty shillings.

For every skin . . . on which shall be ingrossed . . . any grant, appointment, or admission of or to any publick beneficial office or employment, for the space of one year, or any lesser time, of or above the value of twenty pounds *per annum* sterling money, in salary, fees, and perquisites, within the said colonies and plantations, (except commissions and appointments of officers of the army, navy, ordnance, or militia, of judges, and of justices of the peace) a stamp duty of ten shillings.

For every skin . . . on which any grant of any liberty, privilege, or franchise, under the seal of any of the said colonies or plantations, or under the seal or sign manual of any governor, proprietor, or publick officer alone, or in conjunction with any other person or persons, or with any council, or any council and assembly, or any exemplification of the same, shall be ingrossed . . . , within the said colonies and plantations, a stamp duty of six pounds.

For every skin . . . on which shall be ingrossed . . . any licence for retailing of spirituous liquors, to be granted to any person who shall take out the same, within the said colonies and plantations, a stamp duty of twenty shillings.

For every skin . . . on which shall be ingrossed . . . any licence for retailing of wine, to be granted to any person who shall not take out a licence for retailing of spirituous liquors, within the said colonies and plantations, a stamp duty of four pounds.

For every skin . . . on which shall be ingrossed . . . any licence for retailing of wine, to be granted to any person who shall take out a licence for retailing of spirituous liquors, within the said colonies and plantations, a stamp duty of three pounds.

For every skin . . . on which shall be ingrossed . . . any probate of a will, letters of administration, or of guardianship for any estate above the value of twenty pounds sterling money; within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands, a stamp duty of five shillings.

For every skin . . . on which shall be ingrossed . . . any such probate, letters of administration or of guardianship, within all other parts of the *British* dominions in *America*, a stamp duty of ten shillings.

For every skin . . . on which shall be ingrossed . . . any bond for securing the payment of any sum of money, not exceeding the sum of ten pounds sterling money, within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands, a stamp duty of six pence.

For every skin . . . on which shall be ingrossed . . . any bond for securing the payment of any sum of money above ten pounds, and not exceeding the sum of twenty pounds sterling money, within such colonies, plantations, and islands, a stamp duty of one shilling.

For every skin . . . on which shall be ingrossed . . . any bond for securing the payment of any sum of money above twenty pounds, and not exceeding forty pounds sterling money, within such colonies, plantations, and islands, a stamp duty of one shilling and six pence.

For every skin . . . on which shall be ingrossed . . . any order or warrant for surveying or setting out any quantity of land, not exceeding one hundred acres, issued by any governor, proprietor, or any publick officer alone, or in conjunction with any other person or persons, or with any council, or any council and assembly, within the *British* colonies and plantations in *America*, a stamp duty of six pence.

For every skin . . . on which shall be ingrossed . . . any such order or warrant for surveying or setting out any quantity of land above one hundred, and not exceeding two hundred acres, within the said colonies and plantations, a stamp duty of one shilling.

For every skin . . . on which shall be ingrossed . . . any such order or warrant for surveying or setting out any quantity of land above two hundred, and not exceeding three hundred and twenty acres, and in proportion for every such order or warrant for surveying or setting out every other three hundred and twenty acres, within the said colonies and plantations, a stamp duty of one shilling and six pence.

For every skin . . . on which shall be ingrossed . . . any original grant, or any deed, mesne conveyance, or other instrument whatsoever, by which any quantity of land not exceeding one hundred acres shall be granted, conveyed, or assigned, within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands (except leases for any term not exceeding the term of twenty one years) a stamp duty of one shilling and six pence.

For every skin . . . on which shall be ingrossed . . . any such original grant . . . by which any quantity of land above one hundred, and not exceeding two hundred acres, shall be granted . . . within such colonies, plantations, and islands, a stamp duty of two shillings.

For every skin . . . on which shall be ingrossed . . . any such original grant . . . by which any quantity of land above two hundred, and not exceeding Three hundred and twenty acres, shall be granted . . . and in proportion for every such grant . . .

granting . . . every other three hundred and twenty acres, within such colonies, plantations, and islands, a stamp duty of two shillings and six pence.

For every skin . . . on which shall be ingrossed . . . any such original grant . . . by which any quantity of land not exceeding one hundred acres shall be granted . . . within all other parts of the *British* dominions in *America*, a stamp duty of three shillings.

For every skin . . . on which shall be ingrossed . . . any such original grant . . . by which any quantity of land above one hundred, and not exceeding two hundred acres, shall be granted . . . within the same parts of the said dominions, a stamp duty of four shillings.

For every skin . . . on which shall be ingrossed . . . any such original grant . . . whereby any quantity of land above two hundred, and not exceeding three hundred and twenty acres, shall be granted . . . and in proportion for every such grant . . . granting . . . every other three hundred and twenty acres, within the same parts of the said dominions, a stamp duty of five shillings.

For every skin . . . on which shall be ingrossed . . . any grant, appointment, or admission, of or to any publick beneficial office or employment, not herein before charged, above the value of twenty pounds *per annum* sterling money in salary, fees, and perquisites, or any exemplification of the same, within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands (except commissions of officers of the army, navy, ordnance, or militia, and of justices of the peace) a stamp duty of four pounds.

For every skin . . . on which shall be ingrossed . . . any such grant . . . within all other parts of the *British* dominions in *America*, a stamp duty of six pounds.

For every skin . . . on which shall be ingrossed . . . any indenture, lease, conveyance, contract, stipulation, bill of sale, charter party, protest, articles of apprenticeship, or covenant (except for the hire of servants not apprentices, and also except such other matters as are herein before charged) within the *British* colonies and plantations in *America*, a stamp duty of two shillings and six pence.

For every skin . . . on which any warrant or order for auditing

any publick accounts, beneficial warrant, order, grant, or certificate, under any publick seal, or under the seal or sign manual of any governor, proprietor, or publick officer alone, or in conjunction with any other person or persons, or with any council, or any council and assembly, not herein before charged, or any passport or let-pass, surrender of office, or policy of assurance, shall be ingrossed . . . within the said colonies and plantations (except warrants or orders for the service of the navy, army, ordnance, or militia, and grants of offices under twenty pounds *per annum* in salary, fees, and perquisites) a stamp duty of five shillings.

For every skin . . . on which shall be ingrossed . . . any notarial act, bond, deed, letter of attorney, procuration, mortgage, release, or other obligatory instrument, not herein before charged, within the said colonies and plantations, a stamp duty of two shillings and three pence.

For every skin . . . on which shall be ingrossed . . . any register, entry, or inrollment of any grant, deed, or other instrument whatsoever herein before charged, within the said colonies and plantations, a stamp duty of three pence.

For every skin . . . on which shall be ingrossed . . . any register, . . . not herein before charged, within the said colonies and plantations, a stamp duty of two shillings.

And for and upon every pack of playing cards, and all dice, which shall be sold or used within the said colonies and plantations, the several stamp duties following (that is to say)

For every pack of such cards, the sum of one shilling.

And for every pair of such dice, the sum of ten shillings.

And for and upon every paper, commonly called a *pamphlet*, and upon every news paper, containing publick news, intelligence, or occurrences, which shall be printed, dispersed, and made publick, within any of the said colonies and plantations, and for and upon such advertisements as are herein after mentioned, the respective duties following (that is to say)

For every such pamphlet and paper contained in half a sheet, or any lesser piece of paper, which shall be so printed, a stamp duty of one halfpenny, for every printed copy thereof.

For every such pamphlet and paper (being larger than half a sheet, and not exceeding one whole sheet) which shall be so printed, a stamp duty of one penny, for every printed copy thereof.

For every pamphlet and paper being larger than one whole sheet, and not exceeding six sheets in octavo, or in a lesser page, or not exceeding twelve sheets in quarto, or twenty sheets in folio, which shall be so printed, a duty after the rate of one shilling for every sheet of any kind of paper which shall be contained in one printed copy thereof.

For every advertisement to be contained in any gazette, news paper, or other paper, or any pamphlet which shall be so printed, a duty of two shillings.

For every almanack or calendar, for any one particular year, or for any time less than a year, which shall be written or printed on one side only of any one sheet, skin, or piece of paper parchment, or vellum, within the said colonies and plantations, a stamp duty of two pence.

For every other almanack or calendar for any one particular year, which shall be written or printed within the said colonies and plantations, a stamp duty of four pence.

And for every almanack or calendar written or printed within the said colonies and plantations, to serve for several years, duties to the same amount respectively shall be paid for every such year.

For every skin . . . on which any instrument, proceeding, or other matter or thing aforesaid, shall be ingrossed . . . within the said colonies and plantations, in any other than the *English* language, a stamp duty of double the amount of the respective duties before charged thereon.

And there shall be also paid in the said colonies and plantations, a duty of six pence for every twenty shillings, in any sum not exceeding fifty pounds sterling money, which shall be given, paid, contracted, or agreed for, with or in relation to any clerk or apprentice, which shall be put or placed to or with any master or mistress to learn any profession, trade, or employment.

II. And also a duty of one shilling for every twenty shillings, in any sum exceeding fifty pounds, which shall be given, paid, contracted, or agreed, for, with, or in relation to any such clerk or apprentice.

III. And be it further enacted . . . , That every deed, instrument, note, memorandum, letter, or other minument or writing, for or relating to the payment of any sum of money, or for making any valuable consideration for or upon the loss of any ship,

vessel, goods, wages, money, effects, or upon any loss by fire, or for any other loss whatsoever, or for or upon any life or lives, shall be construed, deemed, and adjudged to be policies of assurance, within the meaning of this act: and if any such deed, . . . for insuring, or tending to insure, any more than one ship or vessel for more than any one voyage, or any goods . . . or other matter or thing whatsoever, for more than one voyage, or in more than one ship or vessel, or being the property of, or belonging to, any more than one person, or any particular number of persons in general partnership, or any more than one body politick or corporate, or for more than one risque; then, in every such case, the money insured thereon, or the valuable consideration thereby agreed to be made, shall become the absolute property of the insured, and the insurer shall also forfeit the premium given for such insurance, together with the sum of one hundred pounds.

IV. And be it further enacted . . . , That every deed, instrument, note, memorandum, letter, or other minument or writing, between the captain or master or owner of any ship or vessel, and any merchant, trader, or other person, in respect to the Freight or conveyance of any money, goods, wares, merchandizes, or effects, laden or to be laden on board of any such ship or vessel, shall be deemed and adjudged to be a charter party within the meaning of this act.

V. And be it further enacted . . . , That all books and pamphlets serving chiefly for the purpose of an almanack, by whatsoever name or names intituled or described, are and shall be charged with the duty imposed by this act on almanacks, but not with any of the duties charged by this act on pamphlets, or other printed papers; any thing herein contained to the contrary notwithstanding.

VI. Provided always, that this act shall not extend to charge any bills of exchange, accompts, bills of parcels, bills of fees, or any bills or notes not sealed for payment of money at sight, or upon demand, or at the end of certain days of payment.

VII. Provided, That nothing in this act contained shall extend to charge the probate of any will, or letters of administration to the effects of any common seaman or soldier, who shall die in his Majesty's service; a certificate being produced from the commanding officer of the ship or vessel, or troop or company in which such seaman or soldier served at the time of his death,

and oath, or if by a quaker a solemn affirmation, made of the truth thereof, before the proper judge or officer by whom such probate or administration ought to be granted; which oath or affirmation such judge or officer is hereby authorized and required to administer, and for which no fee or reward shall be taken.

VIII. Provided always, and be it enacted, That until after the expiration of five years from the commencement of the said duties, no skin . . . on which any instrument . . . shall be ingrossed . . . , within the colonies of *Quebec* or *Granada*, in any other than the *English* language, shall be liable to be charged with any higher stamp duty than if the same had been ingrossed . . . in the *English* language.

IX. Provided always, That nothing in this act contained shall extend to charge with any duty, any deed, or other instrument, which shall be made between any *Indian* nation and the governor, proprietor of any colony, lieutenant governor, or commander in chief alone, or in conjunction with any other person or persons, or with any council, or any council and assembly of any of the said colonies or plantations, for or relating to the granting, surrendering, or conveying, any lands belonging to such nation, to, for, or on behalf of his Majesty, or any such proprietor, or to any colony or plantation.

X. Provided always, That this act shall not extend to charge any proclamation, forms of prayer and thanksgiving, or any printed votes of any house of assembly in any of the said colonies and plantations, with any of the said duties on pamphlets or news papers; or to charge any books commonly used in any of the schools within the said colonies and plantations, or any books containing only matters of devotion or piety; or to charge any single advertisement printed by itself, or the daily accounts or bills of goods imported and exported, so as such accounts or bills do contain no other matters than what have been usually comprized therein; any thing herein contained to the contrary notwithstanding.

XI. Provided always, That nothing in this act contained shall extend to charge with any of the said duties, any vellum . . . on which shall only be engrossed . . . any certificate that shall be necessary to intitle any person to receive a bounty granted by act of parliament.

XII. And be it further enacted . . . , That the said several

duties shall be under the management of the commissioners, for the time being, of the duties charged on stamped vellum, parchment, and paper, in *Great Britain:* and the said commissioners are hereby impowered and required to employ such officers under them, for that purpose, as they shall think proper; and to use such stamps and marks, to denote the stamp duties hereby charged, as they shall think fit; and to repair, renew, or alter the same, from time to time, as there shall be occasion; and to do all other acts, matters, and things, necessary to be done, for putting this act in execution with relation to the duties hereby charged.

XIII. And be it further enacted . . . , That the commissioners for managing the said duties, for the time being, shall and may appoint a fit person or persons to attend in every court or publick office within the said colonies and plantations, to take notice of the vellum, parchment, or paper, upon which any of the matters or things hereby charged with a duty shall be ingrossed, written, or printed, and of the stamps or marks thereupon, and of all other matters and things tending to secure the said duties; and that the judges in the several courts, and all other persons to whom it may appertain, shall, at the request of any such officer, make such orders, and do such other matters and things, for the better securing of the said duties, as shall be lawfully or reasonably desired in that behalf: [said officers to take an oath for the faithful performance of their duties.]

XIV. And be it further enacted . . . , That the said commissioners, and all officers to be employed or entrusted by or under them as aforesaid, shall, from time to time, in and for the better execution of their several places and trusts, observe such rules, methods, and orders, as they respectively shall, from time to time, receive from the high treasurer of *Great Britain*, or the commissioners of the treasury, or any three or more of such commissioners for the time being; and that the said commissioners for managing the stamp duties shall take especial care, that the several parts of the said colonies and plantations shall, from time to time, be sufficiently furnished with vellum, parchment, and paper, stamped or marked with the said respective duties.

XV. And be it further enacted . . . , That if any person or persons shall sign, ingross, write, print, or sell, or expose to sale, or cause to be signed, ingrossed, written, printed, or sold, or

exposed to sale, in any of the said colonies or plantations, or in any other part of his Majesty's dominions, any matter or thing, for which the vellum . . . is hereby charged to pay any duty, before the same shall be marked or stamped with the marks or stamps to be provided as aforesaid, or upon which there shall not be some stamp or mark resembling the same; or shall sign, ingross, . . . or expose to sale . . . , any matter or thing upon any vellum . . . that shall be marked or stamped for any lower duty than the duty by this act made payable in respect thereof; every such person so offending shall, for every such offence, forfeit the sum of ten pounds.

XVI. And be it further enacted . . . , That no matter or thing whatsoever, by this act charged with the payment of a duty, shall be pleaded or given in evidence, or admitted in any court within the said colonies and plantations, to be good, useful, or available in law or equity, unless the same shall be marked or stamped, in pursuance of this act, with the respective duty hereby charged thereon, or with an higher duty.

XVII. Provided nevertheless, and be it further enacted . . . , That if any vellum . . . containing any deed, instrument, or other matter or thing, shall not be duly stamped in pursuance of this act, at the time of the signing, sealing, or other execution, or the entry or inrollment thereof, any person interested therein, or any person on his or her behalf, upon producing the same to any one of the chief distributors of stampt vellum . . . , and paying to him the sum of ten pounds for every such deed, instrument, matter, or thing, and also double the amount of the duties payable in respect thereof, shall be intitled to receive from such distributor, vellum . . . stamped pursuant to this act, to the amount of the money so paid; a certificate being first written upon every such piece of vellum . . . , expressing the name and place of abode of the person by or on whose behalf such payment is made, the general purport of such deed . . . , the names of the parties therein, and of the witnesses (if any) thereto, and the date thereof, which certificate shall be signed by the said distributor; and the vellum . . . shall be then annexed to such deed, . . . by or in the presence of such distributor, who shall impress a seal upon wax, to be affixed on the part where such annexation shall be made, in the presence of a magistrate, who shall attest such signature and sealing; and the deed . . .

from thenceforth shall and may, with the vellum . . . so annexed, be admitted and allowed in evidence in any court whatsoever, and shall be as valid and effectual as if the proper stamps had been impressed thereon at the time of the signing . . . thereof: and the said distributor shall, once in every six months, or oftener if required by the commissioners for managing the stamp duties, send to such commissioners true copies of all such certificates, and an account of the number of pieces of vellum . . . so annexed, and of the respective duties impressed upon every such piece.

XVIII. And be it further enacted . . . , That if any person shall forge, counterfeit, erase, or alter, any such certificate, every such person so offending shall be guilty of felony, and shall suffer death as in cases of felony without the benefit of clergy.

XIX. And be it further enacted . . . That if any person or persons shall, in the said colonies or plantations, or in any other part of his Majesty's dominions, counterfeit or forge any seal, stamp, mark, type, device, or label, to resemble any seal . . . which shall be provided or made in pursuance of this act; or shall counterfeit or resemble the impression of the same upon any vellum, parchment, paper, cards, dice or other matter or thing, thereby to evade the payment of any duty hereby granted; or shall make, sign, print, utter, vend, or sell, any vellum, . . . with such counterfeit mark or impression thereon, knowing such mark or impression to be counterfeited; then every person so offending shall be adjudged a felon, and shall suffer death as in cases of felony without the benefit of clergy.

XX. And it is hereby declared, That upon any prosecution or prosecutions for such felony, the dye, tool, or other instrument made use of in counterfeiting or forging any such seal, stamp, mark, type, device, or label, together with the vellum . . . having such counterfeit impression, shall, immediately after the trial or conviction of the party or parties accused, be broke, defaced, or destroyed, in open court.

XXI. And be it further enacted . . . , That if any register, publick officer, clerk, or other person in any court, registry, or office within any of the said colonies or plantations, shall, at any time after the said first day of *November*, one thousand seven hundred and sixty five, enter, register, or inroll, any matter or thing hereby charged with a stamp duty, unless the same shall

appear to be duly stamped; in every such case such register, publick officer, clerk, or other person, shall, for every such offence, forfeit the sum of twenty pounds.

XXII. And be it further enacted . . . That from and after . . . [Nov. 1, 1765] . . . if any counsellor, clerk, officer, attorney, or other person, to whom it shall appertain, or who shall be employed or intrusted, in the said colonies . . . , to enter or file any matter or thing in respect whereof any duty shall be payable by virtue of this act, shall neglect to enter, file, or record the same; as by law the same ought to be entered, filed, or recorded, within the space of four months after he shall have received any money for or in respect of the same, or shall have promised or undertaken so to do; or shall neglect to enter, file, or record, any such matter or thing, before any subsequent, further, or other proceeding, matter, or thing, in the same suit, shall be had, entered, filed, or recorded; that then every such counsellor, clerk, officer, attorney, or other person so neglecting or offending, in each of the cases aforesaid, shall forfeit the sum of fifty pounds for every such offence.

XXIII. And be it further enacted, . . . That if any person or persons, at any time after . . . [Nov. 1, 1765] . . . shall write, ingross, or print, or cause to be written, ingrossed, or printed, in the said colonies . . . , or any other part of his said Majesty's dominions, either the whole or any part of any matter or thing whatsoever in respect whereof any duty is payable by this act, upon any part of any piece of vellum . . . whereon there shall have been before written any other matter or thing in respect whereof any duty was payable by this act; or shall fraudulently erase, or cause to be erased, the name or names of any person or persons, or any sum, date, or other thing, ingrossed, written, or printed, in such matter or thing as aforesaid; or fraudulently cut, tear, or get off, any mark or stamp from any piece of vellum . . . , or any part thereof, with intent to use such stamp or mark for any other matter or thing in respect whereof any duty shall be payable by virtue of this act; that then, and so often, and in every such case, every person so offending shall, for every such offence, forfeit the sum of fifty pounds.

XXIV. And be it further enacted . . . , That every matter and thing, in respect whereof any duty shall be payable in pursuance of this act, shall be ingrossed . . . in such manner, that some

part thereof shall be either upon, or as near as conveniently may be, to the stamps or marks denoting the duty; upon pain that the person who shall ingross . . . or cause to be ingrossed . . . any such matter or thing in any other manner, shall, for every such offence, forfeit the sum of five pounds.

XXV. And be it further enacted . . . , That every officer of each court, and every justice of the peace or other person within the said colonies . . . , who shall issue any writ or process upon which a duty is by this act payable, shall, at the issuing thereof, set down upon such writ or process the day and year of his issuing the same, which shall be entered upon a remembrance, or in a book to be kept for that purpose, setting forth the abstract of such writ or process; upon pain to forfeit the sum of ten pounds for every such offence.

XXVI. And, for the better collecting and securing the duties hereby charged on pamphlets containing more than one sheet of paper as aforesaid, be it further enacted . . . , That from and after . . . [Nov. 1, 1765] . . . one printed copy of every pamphlet which shall be printed or published within any of the said colonies . . . , shall within the space of fourteen days after the printing thereof, be brought to the chief distributor in the colony . . . where such pamphlet shall be printed, and the title thereof, with the number of the sheets contained therein, and the duty hereby charged thereon, shall be registered or entered in a book to be there kept for that purpose; which duty shall be thereupon paid to the proper officer or officers appointed to receive the same, or his or their deputy or clerk, who shall thereupon forthwith give a receipt for the same on such printed copy, to denote the payment of the duty hereby charged on such pamphlet; and if any such pamphlet shall be printed or published, and the duty hereby charged thereon shall not be duly paid, and the title and number of sheets shall not be registered, and a receipt for such duty given on one copy, where required so to be, within the time herein before for that purpose limited; that then the author, printer, and publisher, and all other persons concerned in or about the printing or publishing of such pamphlet, shall, for every such offence, forfeit the sum of ten pounds, and shall lose all property therein, and in every other copy thereof, so as any person may freely print and publish the same, paying the duty payable in respect thereof by virtue of this

act, without being liable to any action, prosecution, or penalty for so doing.

XXVII. And it is hereby further enacted . . . , That no person whatsoever shall sell or expose to sale any such pamphlet, or any news paper, without the true respective name or names, and place or places of abode, of some known person or persons by or for whom the same was really and truly printed or published, shall be written or printed thereon; upon pain that every person offending therein shall, for every such offence, forfeit the sum of twenty pounds.

XXVIII. And be it further enacted . . . , That no officer appointed for distributing stamped vellum . . . in the said colonies . . . , shall sell or deliver any stamped paper for printing any pamphlet, or any publick news, intelligence, or occurrences, to be contained in one sheet, or any lesser piece of paper, unless such person shall give security to the said officer, for the payment of the duties for the advertisements which shall be printed therein or thereupon.

XXIX. And whereas it may be uncertain how many printed copies of the said printed news papers or pamphlets, to be contained in one sheet or in a lesser piece of paper, may be sold; and to the intent the duties hereby granted thereupon may not be lessened by printing a less number than may be sold, out of a fear of a loss thereby in printing more such copies than will be sold; it is hereby provided, and be it further enacted . . . , That the proper officer or officers appointed for managing the said stamp duties, shall and may cancel, or cause to be cancelled, all the stamps upon the copies of any impression of any news paper or pamphlet contained in one sheet, or any lesser piece of paper, which shall really and truly remain unsold, and of which no profit or advantage has been made; and upon oath, or if by a quaker, upon solemn affirmation, made before a justice of the peace, or other proper magistrate, that all such copies, containing the stamps so tendered to be cancelled, are really and truly remaining unsold, and that none of the said copies have been fraudulently returned or rebought, or any profit or advantage made thereof; which oath or affirmation such magistrate is hereby authorized to administer, and to examine upon oath or affirmation into all circumstances relating to the selling or disposing of such printed copies, shall and may deliver, or cause

to be delivered, the like number of other sheets, half sheets, or less pieces of paper, properly stamped with the same respective stamps, upon payment made for such paper, but no duty shall be taken for the stamps thereon; any thing herein contained to the contrary notwithstanding: and the said commissioners for managing the stamp duties for the time being are hereby impowered, from time to time, to make such rules and orders for regulating the methods, and limiting the times, for such cancelling and allowance as aforesaid, with respect to such news papers and pamphlets, as they shall, upon experience and consideration of the several circumstances, find necessary or convenient, for the effectual securing the duties thereon, and doing justice to the persons concerned in the printing and publishing thereof.

XXX. Provided always, and be it further enacted . . . , That any officer or officers employed by the said commissioners for managing the stamp duties, shall and may deliver to any person, by or for whom any almanack or almanacks shall have been printed, paper marked or stamped according to the true intent and meaning hereof, for the printing such almanack or almanacks, upon his or her giving sufficient security to pay the amount of the duty hereby charged thereon, within the space of three months after such delivery; and that the said officer or officers, upon bringing to him or them any number of the copies of such almanacks, within the space of three months from the said delivery and request to him or them in that behalf made, shall cancel all the stamps upon such copies, and abate to every such person so much of the money due upon such security as such cancelled stamps shall amount to.

XXXI. Provided always, That where any almanack shall contain more than one sheet of paper, it shall be sufficient to stamp only one of the sheets or pieces of paper upon which such almanack shall be printed, and to pay the duty accordingly.

XXXII. And it is hereby further enacted . . . , That from and after the said first day of *November*, one thousand seven hundred and sixty five, in case any person or persons, within any of the said colonies . . . , shall sell, hawk, carry about, utter, or expose to sale, any almanack, or calendar, or any news paper, or any book, pamphlet, or paper, deemed or construed to be, or serving the purpose of, an almanack or news paper, within the

intention and meaning of this act, not being stamped or marked as by this act is directed; every such person, shall for every such offence, forfeit the sum of forty shillings.

XXXIII. And be it further enacted . . . , That from and after . . . [Nov. 1, 1765] . . . , the full sum or sums of money, or other valuable consideration received, or in any wise directly or indirectly given, paid, agreed, or contracted, for, with, or in relation to any clerk or apprentice, within any of the said colonies . . . , shall be truly inserted, or written in words at length, in some indenture or other writing which shall contain the covenants, articles, contracts, or agreements, relating to the service of such clerk or apprentice; and shall bear date upon the day of the signing, sealing, or other execution of the same, upon pain that every master or mistress to or with whom, or to whose use, any sum of money, or other valuable consideration whatsoever, shall be given, paid, secured, or contracted, for or in respect of any such clerk or apprentice, which shall not be truly and fully so inserted and specified in some such indenture, or other writing, shall, for every such offence, forfeit double the sum, or double the amount of any other valuable consideration so given, paid, agreed, secured, or contracted for; to be sued for and recovered at any time, during the term specified in the indenture or writing for the service of such clerk or apprentice, or within one year after the determination thereof; and that all such indentures, or other writings, shall be brought, within the space of three months, to the proper officer or officers, appointed by the said commissioners for collecting the said duties within the respective colony or plantation; and the duty hereby charged for the sums, or other valuable consideration inserted therein, shall be paid by the master or mistress of such clerk or apprentice to the said officer or officers, who shall give receipts for such duty on the back of such indentures or other writings; and in case the duty shall not be paid within the time before limited, such master or mistress shall forfeit double the amount of such duty.

[XXXIV. In case the fee is not inserted, and the duty paid, the indenture shall be void.]

XXXV. And be it further enacted . . . , That if any master or mistress of any clerk or apprentice shall neglect to pay the said duty, within the time herein before limited, and any such clerk

or apprentice shall in that case pay, or cause to be paid, to the amount of double the said duty, either during the term of such clerkship or apprenticeship, or within one year after the determination thereof, such master or mistress not having then paid the said double duty although required by such clerk or apprentice so to do; then, and in such case, it shall and may be lawful to and for such clerk or apprentice, within three months after such payment of the said double duty, to demand of such master or mistress, or his or her executors or administrators, such sum or sums of money, or valuable consideration, as was or were paid to such master or mistress, for or in respect of such clerkship or apprenticeship; and in case such sum or sums of money, or valuable consideration, shall not be paid within three months after such demand thereof made, it shall and may be lawful to and for any such clerk or apprentice, or any other person or persons on his or her behalf, to sue for and recover the same, in such manner as any penalty hereby inflicted may be sued for and recovered; and such clerks or apprentices shall, immediately after payment of such double duty, be and are hereby discharged from their clerkships or apprenticeships, and from all actions, penalties, forfeitures, and damages, for not serving the time for which they were respectively bound, contracted for, or agreed to serve, and shall have such and the same benefit and advantage of the time they shall respectively have continued with and served such master or mistress, as they would have been intitled to in case such duty had been paid by such master or mistress, within the time herein before limited for that purpose.

[Sec. XXXVI. prescribes a form of notice to accompany printed indentures, in accordance with the requirement of Sec. XXXV.]

XXXVII. And, for the better securing the said duty on playing cards and dice; be it further enacted . . . , That from and after . . . [Nov. 1, 1765] . . . , no playing cards or dice shall be sold, exposed to sale, or used in play, within the said colonies . . . , unless the paper and thread inclosing, or which shall have inclosed, the same, shall be or shall have been respectively sealed and stamped, or marked, and unless one of the cards of each pack or parcel of cards, so sold, shall be also marked or stamped on the spotted or painted side thereof with such mark or marks as shall have been provided in pursuance of this act, upon pain that every person who shall sell, or expose to sale, any such cards

or dice which shall not have been so respectively sealed, marked, or stamped, as hereby is respectively required, shall forfeit for every pack or parcel of cards, and every one of such dice so sold or exposed to sale, the sum of ten pounds.

XXXVIII. And it is hereby enacted . . . , That if any person within the said colonies or plantations, or any other part of his Majesty's dominions, shall sell or buy any cover or label which has before been made use of for denoting the said duty upon cards, in order to be made use of for the inclosing any pack or parcel of cards; every person so offending shall, for every such offence, forfeit twenty pounds.

XXXIX. Provided always, and be it enacted . . . , That if either the buyer or seller of any such cover or label shall inform against the other party concerned in buying or selling such cover or label, the party so informing shall be admitted to give evidence against the party informed against, and shall be indemnified against the said penalties.

[XL. Penalty of £20 for fraudulently enclosing cards in a stamped cover previously used.]

XLI. And be it further enacted . . . , That from and after . . . [Nov. 1, 1765] . . . , every clerk, officer, and other person employed or concerned in granting, making out, or delivering licences for retailing spirituous liquors or wine within any of the said colonies . . . , shall, and he is hereby required and directed, within two months after delivering any such licences, to transmit to the chief distributor of stamped vellum, parchment, and paper, a true and exact list or account of the number of licences so delivered, in which shall be inserted the names of the persons licensed, and the places where they respectively reside; and if any such clerk, officer, or other person shall refuse or neglect to transmit any such list or account to such distributor, or shall transmit a false or untrue one, then, and in every such case, such clerk, officer, or other person, shall, for every such offence, forfeit fifty pounds.

XLII. And be it further enacted . . . , That licences for selling or uttering by retail spirituous liquors or wine within any of the said colonies . . . , shall be in force and serve for no longer than one year from the date of each licence respectively.

XLIII. Provided nevertheless, and be it enacted . . . , That if any person licenced to sell spirituous liquors or wine, shall

die or remove from the house or place wherein such spirituous liquors or wine shall, by virtue of such licence, be sold, it shall and may be lawful for the executors, administrators, or assigns of such person so dying or removing, who shall be possessed of such house or place, or for any occupier of such house or place, to sell spirituous liquors or wine therein during the residue of the term for which such licence shall have been granted, without any new licence to be had or obtained in that behalf. . . .

XLIV. And it is hereby enacted . . . , That if any person or persons shall sell or utter by retail, that is to say, in any less quantity than one gallon at any one time, any kind of wine, or any liquor called or reputed wine, or any kind of spirituous liquors, in the said colonies . . . , without taking out such licence yearly and every year, he, she, or they so offending shall, for every such offence, forfeit the sum of twenty pounds.

XLV. And be it further enacted . . . , That every person who shall retail spirituous liquors or wine in any prison or house of correction, or any workhouse appointed or to be appointed for the reception of poor persons within any of the said colonies . . . , shall be deemed a retailer of spirituous liquors or wine within this act.

XLVI. Provided always, and be it further enacted . . . , That if at any time after . . . [Nov. 1, 1765] . . . , there shall not be any provision made for licensing the retailers of wine or spirituous liquors, within any of the said colonies . . . , then, and in every such case, and during such time as no provision shall be made, such licences shall and may be granted for the space of one year, and renewed from time to time by the governor or commander in chief of every such respective colony or plantation.

XLVII. And it is hereby further enacted . . . , That every person who shall at any one time buy of any chief distributor within any of the said colonies . . . , vellum, parchment, or paper, the duties whereof shall amount to five pounds sterling money of *Great Britain*, or upwards, shall be allowed after the rate of four pounds *per centum*, upon the prompt payment of the said duties to such chief distributor.

XLVIII. And be it further enacted . . . , That all publick clerks or officers within the said colonies . . . , who shall from time to time have in their custody any publick books, or other matters or things hereby charged with a stamp duty, shall, at any

seasonable time or times, permit any officer or officers thereunto authorized by the said commissioners for managing the stamp duties, to inspect and view all such publick books, matters, and things, and to take thereout such notes and memorandums as shall be necessary for the purpose of ascertaining or securing the said duties, without fee or reward; upon pain that every such clerk or other officer who shall refuse or neglect so to do, upon reasonable request in that behalf made, shall, for every such refusal or neglect, forfeit the sum of twenty pounds.

XLIX. And be it further enacted . . . , That the high treasurer of *Great Britain*, or the commissioners of his Majesty's treasury, or any three or more of such commissioners, for the time being, shall once in every year at least, set the prices at which all sorts of stamped vellum, parchment, and paper, shall be sold by the said commissioners for managing the stamp duties, and their officers; and that the said commissioners for the said duties shall cause such prices to be marked upon every such skin and piece of vellum and parchment, and sheet and piece [*of*] paper: and if any officer or distributor to be appointed by virtue of this act, shall sell, or cause to be sold, any vellum, parchment, or paper, for a greater or higher price or sum, than the price or sum so set or affixed thereon; every such officer or distributor shall, for every such offence, forfeit the sum of twenty pounds.

[Sections L.–LII. require regular accounts to be submitted by officers appointed under the act, and prescribe penalties for refusal, and for misappropriation of funds.]

LIII. And be it further enacted . . . , That the comptroller or comptrollers for the time being of the duties hereby imposed, shall keep perfect and distinct accounts in books fairly written of all the monies arising by the said duties; and if any such comptroller or comptrollers shall neglect his or their duty therein, then he or they, for every such offence, shall forfeit the sum of one hundred pounds.

LIV. And be it further enacted . . . , That all the monies which shall arise by the several rates and duties hereby granted (except the necessary charges of raising, collecting, recovering, answering, paying, and accounting for the same, and the necessary charges from time to time incurred in relation to this act, and the execution thereof) shall be paid into the receipt of his Majesty's exchequer, and shall be entered separate and apart from

all other monies, and shall be there reserved to be from time to time disposed of by parliament, towards further defraying the necessary expences of defending, protecting, and securing, the said colonies and plantations.

[LV. Until the said duties shall take effect, the expenses of executing the act to be met from the sinking fund.]

[LVI. Any three or more commissioners impowered to act.]

LVII. [Forfeitures and penalties incurred after Sept. 29, 1765, for offences against the Sugar Act (4 Geo. III., c. 15,)], and for offences committed against any other act or acts of Parliament relating to the trade or revenues of the said colonies or plantations; shall and may be prosecuted, sued for, and recovered, in any court of record, or in any court of admiralty, in the respective colony or plantation where the offence shall be committed, or in any court of vice admiralty appointed or to be appointed, and which shall have jurisdiction within such colony, plantation, or place, (which courts of admiralty or vice admiralty are hereby respectively authorized and required to proceed, hear, and determine the same) at the election of the informer or prosecutor.

LVIII. [Penalties and forfeitures incurred for offences against this act to be sued for and recovered as in Sec. LVII.]; and that from and after . . . [Sept. 29, 1765] . . . , in all cases, where any suit or prosecution shall be commenced and determined for any penalty or forfeiture inflicted by this act, or by the said act made in the fourth year of his present Majesty's reign, or by any other act of parliament relating to the trade or revenues of the said colonies or plantations, in any court of admirality in the respective colony or plantation where the offence shall be committed, either party, who shall think himself aggrieved by such determination, may appeal from such determination to any court of vice admiralty appointed or to be appointed, and which shall have jurisdiction within such colony, plantation, or place, (which court of vice admiralty is hereby authorized and required to proceed, hear, and determine such appeal) any law, custom, or usage, to the contrary notwithstanding; and the forfeitures and penalties hereby inflicted, which shall be incurred in any other part of his Majesty's dominions, shall and may be prosecuted, sued for, and recovered, with full costs of suit, in any court of record within the kingdom, territory, or place, where the offence shall be committed, in such and the same manner as

any debt or damage, to the amount of such forfeiture or penalty, can or may be sued for and recovered.

LIX. And it is hereby further enacted, That all the forfeitures and penalties hereby inflicted shall be divided, paid, and applied, as follows; (that is to say) one third part of all such forfeitures and penalties recovered in the said colonies and plantations, shall be paid into the hands of one of the chief distributors of stamped vellum, parchment, and paper, residing in the colony or plantation wherein the offender shall be convicted, for the use of his Majesty, his heirs, and successors; one third part of the penalties and forfeitures, so recovered, to the governor or commander in chief of such colony or plantation; and the other third part thereof, to the person who shall inform or sue for the same; and that one moiety of all such penalties and forfeitures recovered in any other part of his Majesty's dominions, shall be to the use of his Majesty, his heirs, and successors, and the other moiety thereof, to the person who shall inform or sue for the same.

LX. And be it further enacted . . . , That all the offences which are by this act made felony, and shall be committed within any part of his Majesty's dominions, shall and may be heard, tried, and determined, before any court of law within the respective kingdom, territory, colony, or plantation, where the offence shall be committed, in such and the same manner as all other felonies can or may be heard, tried, and determined, in such court.

[LXI. Governors to be sworn to the due execution of this act.]

LXII. And be it further enacted . . . , That all records, Writs, pleadings, and other proceedings in all courts whatsoever, and all deeds, instruments, and writings whatsoever, hereby charged, shall be ingrossed and written in such manner as they have been usually accustomed to be ingrossed and written, or are now ingrossed and written within the said colonies and plantations.

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No. 58. Quartering Act

April, 1765

FURTHER to carry into effect the plans of the ministry in reference to America, the annual Mutiny Act of 1765 authorized the dispatch to the colonies of such troops as might be deemed necessary. As it was anticipated that the number so sent would be greater than formerly, the Quartering Act was passed to provide for their accommodation. The provisions of the act were reënacted in 1775 (15 Geo. III., c. 15), and made applicable to the naval forces while on shore.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVI., 305–318. The act is cited as 5 Geo. III., c. 33.

An act to amend and render more effectual, in his Majesty's dominions in America, *an act passed in this present session of parliament, intituled,* An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

WHEREAS *in and by an act made in the present session of parliament, intituled,* An act for punishing mutiny and desertion, and for the better payment of the army and their quarters ; *several regulations are made and enacted for the better government of the army, and their observing strict discipline, and for providing quarters for the army, and carriages on marches and other necessary occasions, and inflicting penalties on offenders against the same act, and for many other good purposes therein mentioned; but the same may not be sufficient for the forces that may be employed in his Majesty's dominions in* America : *and whereas, during the continuance of the said act, there may be occasion for marching and quartering of regiments and companies of his Majesty's forces in several parts of his Majesty's dominions in* America : *and whereas the publick houses and barracks, in his Majesty's dominions in* America, *may not be sufficient to supply quarters for such forces : and whereas it is expedient and necessary that carriages and other conveniences, upon the march of troops in his Majesty's dominions in* America, *should be supplied for that purpose :* be it enacted . . . , That for and during the continuance of this act, and no longer, it shall and may be lawful to and for the constables, tithingmen, magistrates, and other civil officers of villages, towns, townships, cities, districts, and other places, within his Majesty's dominions in *America,* and in their default or absence, for any one justice

of the peace inhabiting in or near any such village, township, city, district or place, and for no others; and such constables, tythingmen, magistrates, and other civil officers as aforesaid, are hereby required to billet and quarter the officers and soldiers, in his Majesty's service, in the barracks provided by the colonies; and if there shall not be sufficient room in the said barracks for the officers and soldiers, then and in such case only, to quarter and billet the residue of such officers and soldiers, for whom there shall not be room in such barracks, in inns, livery stables, ale-houses, victualling-houses, and the houses of sellers of wine by retail to be drank in their own houses or places thereunto belonging, and all houses of persons selling of rum, brandy, strong water, cyder or metheglin, by retail, to be drank in houses; and in case there shall not be sufficient room for the officers and soldiers in such barracks, inns, victualling and other publick ale-houses, that in such and no other case, and upon no other account, it shall and may be lawful for the governor and council of each respective province in his Majesty's dominions in *America*, to authorize and appoint, and they are hereby directed and impowered to authorize and appoint, such proper person or persons as they shall think fit, to take, hire and make fit, and, in default of the said governor and council appointing and authorizing such person or persons, or in default of such person or persons so appointed neglecting or refusing to do their duty, in that case it shall and may be lawful for any two or more of his Majesty's justices of the peace in or near the said villages, towns, townships, cities, districts, and other places, and they are hereby required to take, hire, and make fit for the reception of his Majesty's forces, such and so many uninhabited houses, out-houses, barns, or other buildings, as shall be necessary, to quarter therein the residue of such officers and soldiers for whom there should not be room in such barracks and publick houses as aforesaid, and to put and quarter the residue of such officers and soldiers therein.

II. And it is hereby declared and enacted, That there shall be no more billets at any time ordered, than there are effective soldiers present to be quartered therein: and in order that this service may be effectually provided for, the commander in chief in *America*, or other officer under whose orders any regiment or company shall march, shall, from time to time, give, or cause to

be given, as early notice as conveniently may be, in writing, signed by such commander or officer of their march, specifying their numbers and time of marching as near as may be, to the respective governors of each province through which they are to march; in order that proper persons may be appointed and authorized, in pursuance of this act, to take up and hire, if it shall be necessary, uninhabited houses, outhouses, barns, or other buildings, for the reception of such soldiers as the barracks and publick houses shall not be sufficient to contain or receive.

III. [Military officers taking upon themselves to quarter soldiers contrary to this act, or using any menace to a civil officer to deter him from his duty, to be cashiered. Persons aggrieved by having soldiers quartered upon them may complain to justices of the peace, and be relieved.]

* * * * * * * * * * *

V. Provided nevertheless, and it is hereby enacted, That the officers and soldiers so quartered and billeted as aforesaid (except such as shall be quartered in the barracks, and hired uninhabited houses, or other buildings as aforesaid) shall be received and furnished with diet, and small beer, cyder, or rum mixed with water, by the owners of the inns, livery stables, alehouses, victualling-houses, and other houses in which they are allowed to be quartered and billeted by this act; paying and allowing for the same the several rates herein after mentioned to be payable, out of the subsistence-money, for diet and small beer, cyder, or rum mixed with water.

VI. Provided always, That in case any innholder, or other person, on whom any non-commission officers or private men shall be quartered by virtue of this act, in any of his Majesty's dominions in *America* (except on a march, or employed in recruiting, and likewise except the recruits by them raised, for the space of seven days at most, for such non-commission officers and soldiers who are recruiting, and recruits by them raised) shall be desirous to furnish such non-commission officers or soldiers with candles, vinegar, and salt, and with small beer or cyder, not exceeding five pints, or half a pint of rum mixed with a quart of water, for each man *per diem*, *gratis*, and allow to such non-commission officers or soldiers the use of fire, and the necessary u[n]tensils for dressing and eating their meat, and shall give notice of such his desire to the commanding officer, and shall

furnish and allow the same accordingly; then, and in such case, the non-commission officers and soldiers so quartered shall provide their own victuals; and the officer to whom it belongs to receive, or that actually does receive, the pay and subsistence of such non-commission officers and soldiers, shall pay the several sums herein after-mentioned to be payable, out of the subsistence-money, for diet and small beer, to the non-commission officers and soldiers aforesaid, and not to the innholder or other person on whom such non-commission officers and soldiers are quartered. . . .

VII. And whereas there are several barracks in several places in his Majesty's said dominions in *America*, or some of them, provided by the colonies, for the lodging and covering of soldiers in lieu of quarters, for the ease and conveniency as well of the inhabitants of and in such colonies, as of the soldiers; it is hereby further enacted, That all such officers and soldiers, so put and placed in such barracks, or in hired uninhabited houses, out-houses, barns, or other buildings, shall, from time to time, be furnished and supplied there by the persons to be authorized or appointed for that purpose by the governor and council of each respective province, or upon neglect or refusal of such governor and council in any province, then by two or more justices of the peace residing in or near such place, with fire, candles, vinegar, and salt, bedding, utensils for dressing their victuals, and small beer or cyder, not exceeding five pints, or half a pint of rum mixed with a quart of water, to each man, without paying any thing for the same.

VIII. [Persons taking or hiring uninhabited houses, &c., for troops, and furnishing supplies as aforesaid, to be reimbursed by the province.]

IX. [Officers taking money to excuse any person from having soldiers quartered on him, to be cashiered.]

* * * * * * * * * * *

XI. And be it further enacted . . . , That if any constable, tythingman, magistrate, or other chief officer or person whatsoever, who, by virtue or colour of this act, shall quarter or billet, or be employed in quartering or billeting, any officers or soldiers, within his Majesty's said dominions in *America*, shall neglect or refuse, for the space of two hours, to quarter or billet such officers or soldiers, when thereunto required, in such manner as is by

this act directed, provided sufficient notice be given before the arrival of such forces; or shall receive, demand, contract, or agree for, any sum or sums of money, or any reward whatsoever, for or on account of excusing, or in order to excuse, any person or persons whatsoever from quartering, or receiving into his, her, or their house or houses, any such officer or soldier; or in case any victualler, or any other person . . . , liable by this act to have any officer or soldier billeted or quartered on him or her, shall refuse to receive or victual any such officer or soldier . . . ; or in case any person or persons shall refuse to furnish or allow, according to the directions of this act, the several things herein before directed to be furnished or allowed to officers and soldiers, so quartered or billeted on him or her, or in the barracks, and hired uninhabited houses, out-houses, barns or other buildings, as aforesaid, at the rate herein after mentioned; and shall be thereof convicted before one of the magistrates of any one of the supreme chief or principal common law courts of the colony where such offence shall be committed, either by his own confession, or by the oath of one or more credible witness or witnesses (which oath such magistrate of such court is hereby impowered to administer) every such constable, tythingman, magistrate, or other chief officer or person so offending shall forfeit, for every such offence, the sum of five pounds sterling, or any sum of money not exceeding five pounds, nor less than forty shillings, as the said magistrate (before whom the matter shall be heard) shall in his discretion think fit; . . . and shall direct the said sum of five pounds, or such other sum as shall be ordered to be levied in pursuance of this act as aforesaid, when levied, to be paid into the treasury of the province or colony where the offence shall be committed, to be applied towards the general charges of the said province or colony.

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XIV. And, for the better preventing abuses in quartering or billeting the soldiers in his Majesty's dominions in *America*, in pursuance of this act, be it further enacted . . . , That it shall and may be lawful to and for any one or more justices of the peace, or other officer, within their respective villages, towns, townships, cities, districts, or other places . . . , by warrant or order under his or their hand and seal, or hands and seals, at any time or times during the continuance of this act, to require

and command any constable, tithingman, magistrate, or other chief officer, who shall quarter or billet any soldiers in pursuance of this act, to give an account in writing unto the said justice or justices, or other officer requiring the same, of the number of officers and soldiers who shall be quartered or billeted by them, and also the names of the house-keepers or persons upon whom, and the barracks and hired uninhabited houses, or other buildings as aforesaid, in which any where every such officer or soldier shall be quartered or billeted, together with an account of the street or place where every such house-keeper or person dwells, and where every such barrack or hired uninhabited house or building is or are, and of the signs (if any) which belong to their houses; to the end that it may appear to the said justice or justices, or other officer, where such officers or soldiers are quartered or billeted, and that he or they may thereby be the better enabled to prevent or punish all abuses in the quartering or billeting them.

XV. And be it further enacted . . . , That for the better and more regular provision of carriages for his Majesty's forces in their marches, or for their arms, cloaths, or accoutrements, in his Majesty's said dominions in *America*, all justices of the peace within their several villages, towns, townships, cities, districts, and places, being duly required thereunto by an order from his Majesty, or the general of his forces, or of the general commanding, or the commanding officer there shall, as often as such order is brought and shewn unto one or more of them, by the quarter-master, adjutant, or other officer of the regiment, detachment, or company, so ordered to march, issue out his or their warrants to the constables, tythingmen, magistrates, or other officers of the villages, towns, townships, cities, districts, and other places, from, through, near, or to which such regiment, detachment, or company, shall be ordered to march, requiring them to make such provision for carriages, with able men to drive the same, as shall be mentioned in the said warrant: allowing them reasonable time to do the same, that the neighbouring parts may not always bear the burthen: and in case sufficient carriages cannot be provided within any such village . . . or other place, then the next justice or justices of the peace of the village . . . , or other place, shall, upon such order as aforesaid . . . , issue his or their warrants to the con-

stables . . . or other officers, of such next village . . . or other place, for the purposes aforesaid, to make up such deficiency; and such constable . . . or other officer, shall order or appoint such person or persons, having carriages, within their respective villages . . . or other places, as they shall think proper, to provide and furnish such carriages and men, according to the warrant aforesaid; who are hereby required to provide and furnish the same accordingly.

XVI. And be it further enacted, That the pay or hire for a *New York* waggon, carrying twelve hundred pounds gross weight, shall be seven pence sterling for each mile; and for every other carriage in that and every other colony in his Majesty's said dominions in *America*, in the same proportion; and at or after the same rate or price for what weight every such other carriage shall carry; and that the first day's pay or hire for every such carriage, shall be paid down by such officer to such constable . . . or other civil officer, who shall get or procure such carriages, for the use of the owner or owners thereof; and the pay or hire for every such carriage after the first day, shall be paid every day, from day to day, by such officer as aforesaid, into the hands of the driver or drivers of such carriages respectively, until such carriages shall be discharged from such service, for the use of the owner and owners thereof.

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XVIII. Provided also, That no such waggon, cart, or carriage, shall be obliged to travel more than one day's march, if, within that time, they shall arrive at any other place where other carriages may be procured; but, in case other sufficient carriages cannot be procured, then such carriages shall be obliged to continue in the service till they shall arrive at such village . . . or other place, where proper and sufficient carriages, for the service of the forces, may be procured.

XIX. [Constables and others neglecting to provide carriages as aforesaid, to forfeit not less than twenty nor more than forty shillings for each offence.]

XX. [The colony to repay the extra expense of carriages, if the before-mentioned allowance be insufficient.]

XXI. [Carriages necessarily taken beyond the settlements, to be appraised, and if lost or destroyed, to be paid for according to the appraisal.]

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XXVII. And be it further enacted . . . , That where any troops or parties upon command have occasion in their march, in any of his Majesty's dominions in *America*, to pass regular ferries, it shall and may be lawful for the commanding officer either to pass over with his party as passengers, or to hire the ferry-boat entire to himself and his party, debarring others for that time in his option; and in case he shall chuse to take passage for himself and party as passengers he shall only pay for himself and for each person, officer or soldier, under his command, half of the ordinary rate payable by single persons at any such ferry; and in case he shall hire the ferry-boat for himself and party, he shall pay half of the ordinary rate for such boat or boats; and in such places where there are no regular ferries, but that all passengers hire boats at the rate they can agree for, officers with or without parties are to agree for boats at the rates that other persons do in the like cases.

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No. 59. Resolutions of the Stamp Act Congress

October 19, 1765

In a circular letter of June 8, 1765, the Massachusetts House of Representatives proposed to the other colonies the appointment of committees to meet at New York, in October, "to consult together on the present circumstances of the colonies, and the difficulties to which they are and must be reduced by the operation of the acts of parliament, for levying duties and taxes on the colonies; and to consider of a general and united, dutiful, loyal and humble representation of their condition to his majesty and to the parliament, and to implore relief." The congress met October 7, delegates, variously appointed, being present from Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina. Timothy Ruggles of Massachusetts was chosen chairman. On the 19th a "declaration of the rights and grievances of the colonists in America," originally drafted by John Dickinson, a delegate from Pennsylvania, was agreed to; on the 22d a petition to the King, also drawn by Dickinson, and a memorial and petition to the House of Lords, were approved, followed on the 23d by a petition to the Commons. After voting to recommend to the several colonies the appointment of special agents "for soliciting relief from their present grievances" in England, the congress adjourned. Ruggles did not assent to the declaration of the congress, and was later censured for his refusal by the

Massachusetts House of Representatives. The petition to the Commons was presented in that body January 27, 1766, and, after some debate, was passed over without action.

REFERENCES. — *Text* in Almon's *Prior Documents*, 27, 28. The journal of the congress was printed in Niles's *Weekly Register*, II., 337–342, 353–355, and reprinted in Niles's *Principles and Acts of the Revolution*. Dickinson's draft is in his *Writings* (Ford's ed., 1895), I., 183–187. The best account of the congress is that of Frothingham, *Rise of the Republic*, chap. 5; see also two letters to Thomas McKean, in John Adams's *Works*, X., 60–63.

The members of this Congress, sincerely devoted, with the warmest sentiments of affection and duty to his Majesty's person and government, inviolably attached to the present happy establishment of the Protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit, the circumstances of the said colonies, esteem it our indispensible duty to make the following declarations of our humble opinion, respecting the most essential rights and liberties of the colonists, and of the grievances under which they labour, by reason of several late acts of parliament.

I. That his Majesty's subjects in these colonies, owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body the parliament of Great-Britain.

II. That his Majesty's liege subjects in these colonies, are intitled to all the inherent rights and liberties of his natural born subjects, within the kingdom of Great-Britain.

III. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no Taxes be imposed on them but with their own consent, given personally, or by their representatives.

IV. That the people of these colonies are not, and, from their local circumstances, cannot be, represented in the House of Commons in Great-Britain.

V. That the only representatives of the people of these colonies are persons chosen therein by themselves, and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

VI. That all supplies to the crown being free gifts of the people, it is unreasonable and inconsistent with the principles

and spirit of the British constitution, for the people of Great-Britain to grant to his Majesty the property of the colonists.

VII. That trial by jury, is the inherent and invaluable right of every British subject in these colonies.

VIII. That the late act of parliament, entitled, *An act for granting and applying certain stamp duties, and other duties, in the British colonies and plantations in America, &c.* by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

IX. That the duties imposed by several late acts of parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous; and from the scarcity of specie, the payment of them absolutely impracticable.

X. That as the profits of the trade of these colonies ultimately center in Great-Britain, to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

XI. That the restrictions imposed by several late acts of parliament on the trade of these colonies, will render them unable to purchase the manufactures of Great-Britain.

XII. That the increase, prosperity and happiness of these colonies, depend on the full and free enjoyments of their rights and liberties, and an intercourse with Great-Britain mutually affectionate and advantageous.

XIII. That it is the right of the British subjects in these colonies to petition the king, or either house of parliament.

Lastly, That it is the indispensible duty of these colonies, to the best of sovereigns, to the mother country, and to themselves, to endeavour by a loyal and dutiful address to his Majesty, and humble applications to both houses of parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of American commerce.

No. 60. Declaratory Act

March 18, 1766

THE first legislative protest against the Stamp Act came from Virginia. — May 30, 1765, the House of Burgesses adopted four resolutions, submitted by Patrick Henry, declaring that "The General Assembly of this colony, together with his Majesty or his substitutes, have, in their representative capacity, the only exclusive right and power to lay taxes and imposts upon the inhabitants of this colony; and that every attempt to vest such power in any other person or persons whatever than the General Assembly aforesaid, is illegal, unconstitutional, and unjust, and have [*has*] a manifest tendency to destroy British as well as American liberty." On the 8th of June, Massachusetts issued the call for the Stamp Act congress. The Rockingham ministry, which succeeded that of Grenville in July, was favorable to America; and Conway, the minister in charge of colonial affairs, was opposed to the policy of taxing the colonies without their consent. By November 1, the date on which the Stamp Act was to go into effect, the resolutions of assemblies and public meetings, and the intimidation and violence of the "Sons of Liberty" and others, had made the execution of the act impossible, even if stamps could have been had. A circular letter from Conway to the governors, dated October 24, urging them to do their utmost to maintain law and order, and authorizing them to call upon the military and naval commanders for assistance, if necessary, was unavailing. At the opening of Parliament, December 17, papers relating to affairs in America were submitted. Numerous petitions were also presented setting forth the losses which the Stamp Act had inflicted upon British trade. A resolution declaratory of the right of Parliament to tax the colonies, submitted February 3, was adopted by large majorities. On the 6th the Lords, by a vote of 59 to 54, resolved in favor of executing the Stamp Act; but a similar proposition in the Commons was rejected by a vote of more than two to one. On the 12th the King announced himself favorable to modification of the act; while the examination of Franklin before the House of Commons further strengthened the argument for repeal. The repeal bill and the declaratory bill passed the Commons March 4, and on the 7th the declaratory bill passed the Lords. The proposition to repeal the Stamp Act, however, encountered strong opposition in the Lords, where 33 members entered a protest against it at the second reading, and 28 at the third; but on the 17th the bill passed, and the next day both acts received the royal assent.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVII., 19, 20. The act is cited as 6 Geo. III., c. 12. The act of repeal is 6 Geo. III., c. 11. For the debates, see the *Parliamentary History*, XVI., and the *Annual Register* (1766). Franklin's examination is in his *Works* (Sparks's ed.), IV., 161–198.

An act for the better securing the dependency of his Majesty's dominions in America *upon the crown and parliament of* Great Britain.

WHEREAS *several of the houses of representatives in his Majesty's colonies and plantations in* America, *have of late, against law,*

claimed to themselves, or to the general assemblies of the same, the sole and exclusive right of imposing duties and taxes upon his Majesty's subjects in the said colonies and plantations; and have, in pursuance of such claim, passed certain votes, resolutions, and orders, derogatory to the legislative authority of parliament, and inconsistent with the dependency of the said colonies and plantations upon the crown of Great Britain: . . . be it declared . . . , That the said colonies and plantations in *America* have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and parliament of *Great Britain;* and that the King's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of *Great Britain*, in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of *America*, subjects of the crown of *Great Britain*, in all cases whatsoever.

II. And be it further declared . . . , That all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the parliament of *Great Britain*, to make laws and statutes as aforesaid, is denied, or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.

No. 61. Act suspending the New York Assembly

June 15, 1767

In a message to the New York House of Assembly, June 13, 1766, Governor Moore informed the House of the expected arrival of troops in the city, and recommended that provision be made for them in accordance with the late Quartering Act [No. 58]. On the 19th the House adopted five resolutions, reported by Philip Livingston, excusing themselves from compliance with the request, on the ground that the requisition was "of such a nature and tendency that, should it be granted, the expence might, and probably would, very soon exceed the ability of this colony to pay, as the number of troops that may from time to time require the like provision, are . . . entirely unknown, and the articles required for the greatest part . . . unprecedented;" but the House intimated, at the same time, that a balance of £3990, in the treasury of the province, subject to the order of the commander-in-chief of the forces in America, might be used for the purpose in question. On an inquiry

from the governor as to the precise use to which the money referred to was to be put, the assembly again, June 23, pleaded the small resources of the colony, but recommended that provision be made "for furnishing the barracks in the cities of New York and Albany, with beds, bedding, fire-wood, candles, and utensils for dressing of victuals for two battalions, not exceeding five hundred men each, and one company of artillery for one year"; and that the money beforementioned be drawn upon for the purpose. A bill to this effect was accordingly brought in and passed, and July 3 received the assent of the governor. A report of the action of the assembly having been made to the Board of Trade, the Earl of Shelburne, in a letter of August 6, to Governor Moore, expressed the hope that the requirements of the Quartering Act would be fully complied with. To this letter, communicated to the assembly in November, the House replied that New York had already assumed a heavier financial burden in the matter of supporting troops than any other colony, and that, since the act appeared to them designed for the needs of soldiers on the march, and not of such as might be stationed in the province for a whole year, they could not "put it in the power of any person" to lay upon them such a "ruinous and unsupportable" expense. December 19 the assembly was prorogued until the following March. May 15, 1767, the committee of the House of Commons, to whom the matter had been referred, recommended the suspension of the assembly until the terms of the Quartering Act were complied with; and June 15 a bill embodying the recommendations received the royal assent. The assembly continuing obstinate, it was dissolved. The newly elected House also refused compliance, and was likewise dissolved. A third, in 1769, made the required provision.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVII., 609, 610. The act is cited as 7 Geo. III., c. 59. Extracts from the proceedings of the New York legislature are in Almon's *Prior Documents*.

An act for restraining and prohibiting the governor, council, and house of representatives, of the province of New York, *until provision shall have been made for furnishing the King's troops with all the necessaries required by law, from passing or assenting to any act of assembly, vote, or resolution, for any other purpose.*

WHEREAS *an act of parliament was made in the fifth year of his present Majesty's reign, intituled,* An act to amend and render more effectual, in his Majesty's dominions in *America*, an act passed in this present session of parliament, intituled, *An act for punishing mutiny and desertion, and for the better payment of the army and their quarters; wherein several directions were given, and rules and regulations established and appointed, for the supplying his Majesty's troops, in the* British *dominions in* America, *with such necessaries as are in the said act mentioned during the continuance thereof, from the twenty fourth day of* March, *one thou-*

sand seven hundred and sixty five, until the twenty fourth day of March, *one thousand seven hundred and sixty seven: and whereas the house of representatives of his Majesty's province of* New York *in* America *have, in direct disobedience of the authority of the* British *legislature, refused to make provision for supplying the necessaries and in the manner required by the said act; and an act of assembly hath been passed, within the said province, for furnishing the barracks in the cities of* New York *and* Albany *with firewood and candles, and the other necessaries therein mentioned, for his Majesty's forces, inconsistent with the provisions, and in opposition to the directions, of the said act of parliament: and whereas by an act made in the last session, intituled,* An act to amend and render more effectual, in his Majesty's dominions in *America*, an act passed in this present session of parliament, intituled, *An act for punishing mutiny and desertion, and for the better payment of the army and their quarters, the like directions, rules, and regulations, were given and established, for supplying with necessaries his Majesty's troops within the said dominions during the continuance of such act, from the twenty fourth day of* March, *one thousand seven hundred and sixty six, until the twenty fourth day of* March, *one thousand seven hundred and sixty eight; which act was, by an act made in this present session of parliament, intituled,* An act for further continuing an act of the last session of parliament, intituled, *An act to amend and render more effectual, in his Majesty's dominions in* America, *an act passed in this present session of parliament, intituled,* An act for punishing mutiny and desertion, and for the better payment of the army and their quarters, *further continued until the twenty fourth day of* March, *one thousand seven hundred and sixty nine:* In order therefore to enforce, within the said province of *New York*, the supplying of his Majesty's troops with the necessaries and in the manner required by the said acts of parliament; . . be it enacted . . . , That from and after the first day of *October*, one thousand seven hundred and sixty seven, until provision shall have been made by the said assembly of *New York* for furnishing his Majesty's troops within the said province with all such necessaries as are required by the said acts of parliament, or any of them, to be furnished for such troops, it shall not be lawful for the governor, lieutenant governor, or person presiding or acting as governor or commander in chief, or for the council for the

time being, within the colony, plantation, or province, of *New York* in *America*, to pass, or give his or their assent to, or concurrence in, the making or passing of any act of assembly; or his or their assent to any order, resolution, or vote, in concurrence with the house of representatives for the time being within the said colony, plantation, or province; or for the said house of representatives to pass or make any bill, order, resolution, or vote, (orders, resolutions, or votes, for adjourning such house only, excepted) of any kind, for any other purpose whatsoever; and that all acts of assembly, orders, resolutions, and votes whatsoever, which shall or may be passed, assented to, or made, contrary to the tenor and meaning of this act, after the said first day of *October*, one thousand seven hundred and sixty seven, within the said colony, plantation, or province, before and until provision shall have been made for supplying his Majesty's troops with necessaries as aforesaid, shall be, and are hereby declared to be, null and void, and of no force or effect whatsoever.

II. Provided nevertheless, and it is hereby declared to be the true intent and meaning of this act, That nothing herein before contained shall extend, or be construed to extend, to hinder, prevent, or invalidate, the choice, election, or approbation, of a speaker of the house of representatives for the time being within the said colony, plantation, or province.

Townshend Acts

In August, 1766, Pitt, now Earl of Chatham, succeeded Rockingham as prime minister; but illness soon incapacitated him for active participation in affairs, and the leadership fell to Townshend, chancellor of the exchequer. The irritation over the repeal of the Stamp Act was increased by the reports of continued agitation in America; while the reduction of the land tax from 4*s*. to 3*s*. in the pound, brought about by factious opposition to the ministry, necessitated revenue from some other source. "On January 26, 1767, in a debate on the army, George Grenville moved that America, like Ireland, should support an establishment of her own; and in the course of the discussion which followed, Townshend took occcasion to declare himself a firm advocate of the principle of the Stamp Act." The plans for carrying his policy into effect were brought forward by Townshend in May, and embraced three points: the enforcement of existing laws, the appointment of customs commissioners, and provision for adequate revenue. The new policy was embodied in the three acts following. On the 4th of September Townshend died, and

the execution of the acts, the most important of which had not yet gone into operation, was left to his successors.

REFERENCES. — For the debates and proceedings on the Townshend acts, see the *Parliamentary History*, XVI. Summaries of the debates, reflecting as usual public opinion in England, are in the *Annual Register* (1767). Discussions of the acts in the general histories, except Bancroft, are brief. Of contemporary discussions in America, Dickinson's *Letters from a Farmer* (*Writings*, Ford's ed., I., 305–406) are the most important.

No. 62. Act establishing Customs Commissioners

June 29, 1767

IN 1763 Grenville had endeavored to secure a stricter enforcement of the acts of trade by requiring the principal customs officers for America, many of whom had, by permission of the treasury, continued to reside in England, to proceed to their posts; and the Sugar Act of 1764 had aimed to improve and strengthen the administrative machinery. The special reasons for the act of 1767, providing for the appointment of customs commissioners, are sufficiently set forth in the preamble of the act itself.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVII., 447–449. The act is cited as 7 Geo. III., c. 41.

An Act to enable his Majesty to put the customs, and other duties, in the British *dominions in* America, *and the execution of the laws relating to trade there, under the management of commissioners to be appointed for that purpose, and to be resident in the said dominions.*

WHEREAS *in pursuance of an act of parliament made in the twenty fifth year of the reign of King* Charles *the Second, intituled,* An act for the encouragement of the *Greenland* and *Eastland* trades, and for the better securing the plantation trade, *the rates and duties imposed by that, and several subsequent acts of parliament, upon various goods imported into, or exported from, the* British *colonies and plantations in* America, *have been put under the management of the commissioners of the customs in* England *for the time being, by and under the authority and directions of the high treasurer, or commissioners of the treasury for the time being: and whereas the officers appointed for the collection of the said rates and duties in* America, *are obliged to apply to the said commissioners of the customs in* England, *for their special instructions*

and directions, upon every particular doubt and difficulty which arises in relation to the payment of the said rates and duties; whereby all persons concerned in the commerce and trade of the said colonies and plantations, are greatly obstructed and delayed in the carrying on and transacting of their business: and whereas the appointing of commissioners to be resident in some convenient part of his Majesty's dominions in America, *and to be invested with such powers as are now exercised by the commissioners of the customs in* England *by virtue of the laws in being, would relieve the said merchants and traders from the said inconveniences, tend to the encouragement of commerce, and to the better securing of the said rates and duties, by the more speedy and effectual collection thereof:* be it therefore enacted . . . , That the customs and other duties imposed, by any act or acts of parliament, upon any goods or merchandizes brought or imported into, or exported or carried from, any *British* colony or plantation in *America*, may, from time to time, be put under the management and direction of such commissioners, to reside in the said plantations, as his Majesty . . . , by his . . . commission . . . under the great seal of *Great Britain*, shall judge to be most for the advantage of trade, and security of the revenue of the said *British* colonies ; any law, custom, or usage to the contrary notwithstanding.

II. And it is hereby further enacted . . . , That the said commissioners so to be appointed, or any three or more of them, shall have the same powers and authorities for carrying into execution the several laws relating to the revenues and trade of the said *British* colonies in *America*, as were, before the passing of this act, exercised by the commissioners of the customs in *England*, by virtue of any act or acts of parliament now in force: and it shall and may be lawful to and for his majesty . . . , in such Commission . . . , to make provision for putting in execution the several laws relating to the customs and trade of the said *British* colonies; . . .

* * * * * * * * * * *

No. 63. Revenue Act

June 29, 1767

THE strong opposition in the colonies to the Sugar Act had led, in 1766, to the repeal of the duties imposed by the act, except the duty on tea (6 Geo. III.,

c. 52). In framing the act of 1767, Townshend professed to observe the distinction urged in America between external and internal taxation, and to provide a revenue by means of import duties only. The proceeds of the duties, estimated at about £40,000, were to be applied toward the civil and military expenses of the colonies. Further to insure the observance of the act, writs of assistance were legalized. The duties imposed by the act, with the exception of the duty on tea, were repealed by an act of April 12, 1770.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVII., 505–512. The act is cited as 7 Geo. III., c. 46. The act of repeal is 10 Geo. III., c. 17.

An act for granting certain duties in the British *colonies and plantations in* America; *for allowing a drawback of the duties of customs upon the exportation, from this kingdom, of coffee and cocoa nuts of the produce of the said colonies or plantations; for discontinuing the drawbacks payable on china earthen ware exported to* America; *and for more effectually preventing the clandestine running of goods in the said colonies and plantations.*

WHEREAS *it is expedient that a revenue should be raised, in your Majesty's dominions in* America, *for making a more certain and adequate provision for defraying the charge of the administration of justice, and the support of civil government, in such provinces where it shall be found necessary; and towards further defraying the expences of defending, protecting, and securing the said dominions;* . . . be it enacted . . . , That from and after the twentieth day of *November*, one thousand seven hundred and sixty seven, there shall be raised, levied, collected, and paid, unto his Majesty, his heirs, and successors, for and upon the respective Goods herein after mentioned, which shall be imported from *Great Britain* into any colony or plantation in *America* which now is, or hereafter may be, under the dominion of his Majesty, his heirs, or successors, the several Rates and Duties following; that is to say,

For every hundred weight avoirdupois of crown, plate, flint, and white glass, four shillings and eight pence.

For every hundred weight avoirdupois of green glass, one shilling and two pence.

For every hundred weight avoirdupois of red lead, two shillings.

For every hundred weight avoirdupois of white lead, two shillings.

For every hundred weight avoirdupois of painters.colours, two shillings.

For every pound weight avoirdupois of tea, three pence.

For every ream of paper, usually called or known by the name of *Atlas fine*, twelve shillings.

[Then follow specifications of duties on sixty-six grades or classes of paper.]

* * * * * * * * * *

IV. . . . and that all the monies that shall arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same) shall be applied, in the first place, in such manner as is herein after mentioned, in making a more certain and adequate provision for the charge of the administration of justice, and the support of civil government, in such of the said colonies and plantations where it shall be found necessary; and that the residue of such duties shall be paid into the receipt of his Majesty's exchequer, and shall be entered separate and apart from all other monies paid or payable to his Majesty . . . ; and shall be there reserved, to be from time to time disposed of by parliament towards defraying the necessary expences of defending, protecting, and securing, the *British* colonies and plantations in *America*.

V. And be it further enacted . . . , That his Majesty and his successors shall be, and are hereby, impowered, from time to time, by any warrant or warrants under his or their royal sign manual or sign manuals, countersigned by the high treasurer, or any three or more of the commissioners of the treasury for the time being, to cause such monies to be applied, out of the produce of the duties granted by this act, as his Majesty, or his successors, shall think proper or necessary, for defraying the charges of the administration of justice, and the support of the civil government, within all or any of the said colonies or plantations.

VI. *And whereas the allowing a drawback of all the duties of customs upon the exportation, from this kingdom, of coffee and cocoa nuts, the growth of the* British *dominions in* America, *may be a means of encouraging the growth of coffee and cocoa in the said dominions;* be it therefore enacted . . . , That from and after . . . [Nov. 20, 1767] . . . , upon the exportation of any coffee or cocoa nuts, of the growth or produce of any *British* colony or plantation in *America*, from this kingdom as merchandize, the whole duties of customs, payable upon the importation of such

coffee or cocoa nuts, shall be drawn back and repaid; in such manner, and under such rules, regulations, penalties, and forfeitures, as any drawback or allowance, payable out of the duties of customs upon the exportation of such coffee or cocoa nuts, was, could, or might be paid, before the passing of this act. . . .

VII. And it is hereby further enacted . . . , That no drawback shall be allowed for any china earthen ware sold, after the passing of this act, at the sale of the united company of merchants of *England* trading to the *East Indies*, which shall be entered for exportation from *Great Britain* to any part of America. . . .

VIII. And it is hereby further enacted . . . , That if any china earthen ware sold, after the passing of this act, at the sale of the said united company, shall be entered for exportation to any part of *America* as china earthen ware that had been sold at the sale of the said company before that time; or, if any china earthen ware shall be entered for exportation to any parts beyond the seas, other than to some part of *America*, in order to obtain any drawback thereon, and the said china earthen ware shall nevertheless be carried to any part of *America*, and landed there, contrary to the true intent and meaning of this act; that then, in each and every such case, the drawback shall be forfeited; and the merchant or other person making such entry, and the master or person taking the charge of the ship or vessel on board which the said goods shall be loaden for exportation, shall forfeit double the amount of the drawback paid, or to be paid, for the same, and also treble the value of the said goods; one moiety to and for the use of his Majesty, his heirs, and successors; and the other moiety to such officer of the customs as shall sue for the same; to be prosecuted, sued for, and recovered, in such manner and form, and by the same rules and regulations, as other penalties inflicted for offences against the laws relating to the customs may be prosecuted, sued for, and recovered, by any act or acts of Parliament now in force.

[Sec. IX. provides for the entry and report of vessels in the colonial trade.]

X. *And whereas by an act of parliament made in the fourteenth year of the reign of King* Charles *the Second*, intituled, An act for preventing frauds, and regulating abuses, in his Majesty's customs, *and several other acts now in force, it is lawful for any officer of his Majesty's customs, authorized by writ of assistance under the*

seal of his Majesty's court of exchequer, to take a constable, headborough, or other publick officer inhabiting near unto the place, and in the day-time to enter and go into any house, shop, cellar, warehouse, or room or other place, and, in case of resistance, to break open doors, chests, trunks, and other package there, to seize, and from thence to bring, any kind of goods or merchandize whatsoever prohibited or uncustomed, and to put and secure the same in his Majesty's store-house next to the place where such seizure shall be made: and whereas by an act made in the seventh and eighth years of the reign of King William *the Third, intituled,* An act for preventing frauds, and regulating abuses, in the plantation trade, *it is, amongst other things, enacted, that the officers for collecting and managing his Majesty's revenue, and inspecting the plantation trade, in* America, *shall have the same powers and authorities to enter houses or warehouses, to search for and seize goods prohibited to be imported or exported into or out of any of the said plantations, or for which any duties are payable, or ought to have been paid; and that the like assistance shall be given to the said officers in the execution of their office, as, by the said recited act of the fourteenth year of King* Charles *the Second, is provided for the officers in* England: *but, no authority being expressly given by the said act, made in the seventh and eighth years of the reign of King* William *the Third, to any particular court to grant such writs of assistance for the officers of the customs in the said plantations, it is doubted whether such officers can legally enter houses and other places on land, to search for and seize goods, in the manner directed by the said recited acts:* To obviate which doubts for the future, and in order to carry the intention of the said recited acts into effectual execution, be it enacted . . . , That from and after the said twentieth day of *November,* one thousand seven hundred and sixty seven, such writs of assistance, to authorize and impower the officers of his Majesty's customs to enter and go into any house, warehouse, shop, cellar, or other place, in the *British* colonies or plantations in *America,* to search for and seize prohibited or uncustomed goods, in the manner directed by the said recited acts, shall and may be granted by the said superior or supreme court of justice having jurisdiction within such colony or plantation respectively.

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No. 64. Tea Act

July 2, 1767

THE object of the Tea Act is sufficiently set forth in the first section of the act itself. This act should not be confounded with the act of 1770 (10 Geo. III., c. 17), repealing the duties imposed by the Townshend Revenue Act [No. 63], except the duty on tea.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVII., 600–605. The act is cited as 7 Geo. III., c. 56.

An act for taking off the inland duty of one shilling per *pound weight upon all black and singlo teas consumed in* Great Britain; *and for granting a drawback upon the exportation of teas to* Ireland, *and the* British *dominions in* America, *for a limited time, upon such indemnification to be made in respect thereof by the* East India *company, as is therein mentioned; for permitting the exportation of teas in smaller quantities than one lot to* Ireland, *or the said dominions in* America; *and for preventing teas seized and condemned from being consumed in* Great Britain.

WHEREAS *by an act of parliament made in the eighteenth year of the reign of his late Majesty King* George *the Second, intituled,* An act for repealing the present inland duty of four shillings *per* pound weight upon all tea sold in *Great Britain*, and for granting to his Majesty certain other inland duties in lieu thereof; and for better securing the duty upon tea, and other duties of excise; and for pursuing offenders out of one county into another; *an inland duty of one shilling* per *pound weight avoirdupois, and in that proportion for a greater or lesser quantity, was imposed and charged upon all tea to be sold in* Great Britain; *and also a further duty of twenty five pounds for every one hundred pounds of the gross price at which such teas should be sold at the publick sales of the united company of merchants of* England *trading to the* East Indies, *and proportionably for a greater or lesser sum; which duties were to commence from the twenty fourth day of* June, *one thousand seven hundred and forty five, over and above all customs, subsidies, and duties, payable to his Majesty for the same, upon importation thereof; to be paid in manner as in the said act is directed: and whereas by an act of parliament made in the twenty first year of his said late Majesty's reign, tea was allowed to be*

exported from this kingdom to Ireland, *and his Majesty's plantations in* America, *without payment of the said inland duties: and whereas the taking off the said inland duty of one shilling* per *pound weight upon black and singlo teas, granted by the said act, and the allowing, upon the exportation of all teas which shall be exported to* Ireland *and his Majesty's plantations in* America, *the whole of the duty paid upon the importation thereof into this kingdom, appear to be the most probable and expedient means of extending the consumption of teas legally imported within this kingdom, and of increasing the exportation of teas to* Ireland, *and to his Majesty's plantations in* America, *which are now chiefly furnished by foreigners in a course of illicit trade: and whereas the united company of merchants of* England *trading to the* East Indies *are willing and desirous to indemnify the public, in such manner as is herein after provided, with respect to any diminution of the revenue which shall or may happen from this experiment:* . . . be it enacted . . . , That for and during the space of five years, to be computed from the fifth day of *July*, one thousand seven hundred and sixty seven, the said inland duty of one shilling *per* pound weight upon teas, shall not be paid for or in respect of any bohea, congo, souchong, or pekoe teas, commonly called *Black Teas*, or any teas known by the denomination of singlo teas, which shall be cleared for consumption within *Great Britain*, out of the warehouses of the united company of merchants of *England* trading to the *East Indies*, or their successors; but that all such teas so to be cleared, whether the same have been already, or shall be hereafter, sold by the said company, or their successors, shall be and are hereby freed and discharged, during the said term, from the said inland duty.

II. And it is hereby further enacted . . . , That for and during the like space of five years, to be computed from the fifth day of *July*, one thousand seven hundred and sixty seven, there shall be drawn back and allowed for all teas exported from this kingdom as merchandize to *Ireland*, or any of the *British* colonies or plantations in *America*, the whole duties of customs payable upon the importation of such teas; which drawback or allowance, with respect to such teas as shall be exported to *Ireland*, shall be made to the exporter in such manner, and under such rules, regulations, securities, penalties, and forfeitures, as any drawback or allowance is now payable out of the duty of customs upon the exporta-

tion of foreign goods to *Ireland;* and with respect to such teas as shall be exported to the *British* colonies and plantations in *America*, the said drawback or allowance shall be made in such manner, and under such rules, regulations, penalties, and forfeitures, as any drawback or allowance payable out of the duty of customs upon foreign goods exported to foreign parts, was, could, or might be, made before the passing of this act (except in such cases as are otherwise provided for by this Act.)

III. Provided always . . . , That the drawback allowed by this act shall not be paid or allowed for any teas which shall not be exported directly from the warehouse or warehouses wherein the same shall be lodged, pursuant to the directions of an act made in the tenth year of the reign of his late Majesty King *George* the First.

[Any diminution of revenue, by reason of the discontinuance of the duty, to be made good by the East India Company.]

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VII. *And whereas by an act made in the twenty-first year of the reign of his late Majesty, intituled,* An act for permitting tea to be exported to *Ireland,* and his Majesty's plantations in *America,* without paying the inland duties charged thereupon by an act of the eighteenth year of his present Majesty's reign; and for enlarging the time for some of the payments to be made on the subscription of six millions three hundred thousand pounds, by virtue of an act of this session of parliament; *it is enacted, That from and after the first day of* June, *one thousand seven hundred and forty eight, no tea should be exported to the kingdom of* Ireland, *or to any of his Majesty's plantations in* America, *in any chest, cask, tub, or package whatsoever, other than that in which it was originally imported into* Great Britain, *nor in any less quantities than in the intire lot or lots in which the same was sold at the sale of the said united company, under the penalty of the forfeiture of such tea, and the package containing the same: and whereas the prohibiting the exportation of tea in any less quantity then one intire lot, has been very inconvenient to merchants and traders, and tends to discourage the exportation of tea to* Ireland, *and the said colonies;* be it therefore enacted . . . , That from and after the fifth day of *July,* one thousand seven hundred and sixty seven, the said recited clause shall be, and is hereby, repealed.

VIII. And be it further enacted . . . , That from and after . . . [July 5, 1767] . . . , no tea shall be exported to the kingdom

of *Ireland*, or to any of his Majesty's plantations in *America*, in any chest, cask, tub, or package whatsoever, other than that in which it was originally imported into *Great Britain;* nor in any less quantity than the whole and intire quantity contained in any chest, cask, tub, or package, in which the same was sold at the publick sale of the united company of merchants of *England* trading to the *East Indies;* under the penalty of the forfeiture of such tea, and the package containing the same, which shall and may be seized by any officer of the customs. . . .

IX. And be it enacted . . . , That from and after . . . [July 24, 1767] . . . , all teas which shall be seized and condemned for being illegally imported, or for any other cause, shall not be sold for consumption within this kingdom, but shall be exported to *Ireland*, or to the *British* colonies in *America;* and that no such teas, after the sale thereof, shall be delivered out of any warehouse belonging to his Majesty, otherwise than for exportation as aforesaid; or be exported in any package containing a less quantity than fifty pounds weight; which exportation shall be made in like manner, and under the same rules, regulations, penalties, and forfeitures, except in respect to the allowance of any drawback, as are by this act prescribed, appointed, and inflicted, in relation to the exportation of teas sold by the said company; and upon the like bond and security as is required by the said act made in the twenty first year of the reign of his late Majesty King *George* the Second, to be approved of by the commissioners of the customs or excise in *England* for the time being, or any three of them respectively, or by such person or persons as they shall respectively appoint for that purpose.

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No. 65. Massachusetts Circular Letter

February 11, 1768

THE General Court of Massachusetts met Dec. 30, 1767. The address of Governor Bernard dealt with the question of the boundaries between Massachusetts and New York and New Hampshire and Maine, and did not mention the Townshend acts. The acts were, however, read in the House, and the consideration of them referred to a committee of nine on the state of the province. On the 12th of January the committee reported a draft of a letter to Dennis De Berdt, agent of the colony in England, reviewing the arguments

against taxation by Great Britain, and protesting against the recent acts as unjust and unwarranted. Subsequently a petition to the King, and letters to Shelburne, Rockingham, Camden, Chatham, Conway, and the Commissioners of the Treasury, were adopted. On the 21st of January a motion "to appoint a time to consider the expediency of writing to the assemblies of the other colonies on this continent, with respect to the importance of their joining with them in petitioning his Majesty at this time," was rejected; but on Feb. 4 the motion was reconsidered, and a committee appointed "to prepare a letter to be sent to each of the Houses of Representatives and Burgesses on the continent, to inform them of the measures which this House has taken with regard to the difficulties arising from the acts of Parliament for levying duties and taxes on the American colonists." The letter, drawn up by Samuel Adams, was reported on the 11th, and adopted. The letter was laid before the cabinet April 15, by Lord Hillsborough, secretary of state for the colonies. (A letter from Hillsborough to the governors of the several colonies, April 21, called upon them to exert their "utmost influence" to prevent the various assemblies from taking action on the Massachusetts circular; while a communication to Governor Bernard, of the following day, instructed him to require the assembly to rescind the resolution under which the circular letter was issued, and, in case of refusal, to dissolve them.) On the 30th of June, after adopting a letter to Hillsborough defending their action, the House, by a vote of 92 to 17, refused to rescind. The next day the General Court was dissolved.

REFERENCES. — *Text* in Bradford's *Massachusetts State Papers*, 134–136; the same work gives the other Massachusetts letters and documents referred to above. Almon's *Prior Documents*, 220, gives Hillsborough's letter to the governors; 203–205, extracts from the letter to Bernard; 213–218, replies of other colonies to the circular letter.

Province of Massachusetts Bay, February 11, 1768.

SIR,

The House of Representatives of this province, have taken into their serious consideration, the great difficulties that must accrue to themselves and their constituents, by the operation of several acts of Parliament, imposing duties and taxes on the American colonies.

As it is a subject in which every colony is deeply interested, they have no reason to doubt but your House is deeply impressed with its importance, and that such constitutional measures will be come into, as are proper. It seems to be necessary, that all possible care should be taken, that the representatives of the several assemblies, upon so delicate a point, should harmonize with each other. The House, therefore, hope that this letter will be candidly considered in no other light then as expressing a disposition freely to communicate their mind to a sister colony, upon a common concern, in the same manner as they would be

glad to receive the sentiments of your or any other Houes of Assembly on the continent.

The House have humbly represented to the ministry, their own sentiments, that his Majesty's high court of Parliament is the supreme legislative power over the whole empire; that in all free states the constitution is fixed, and as the supreme legislative derives its power and authority from the constitution, it cannot overleap the bounds of it, without destroying its own foundation; that the constitution ascertains and limits both sovereignty and allegiance, and, therefore, his Majesty's American subjects, who acknowledge themselves bound by the ties of allegiance, have an equitable claim to the full enjoyment of the fundamental rules of the British constitution; that it is an essential, unalterable right, in nature, engrafted into the British constitution, as a fundamental law, and ever held sacred and irrevocable by the subjects within the realm, that what a man has honestly acquired is absolutely his own, which he may freely give, but cannot be taken from him without his consent; that the American subjects may, therefore, exclusive of any consideration of charter rights, with a decent firmness, adapted to the character of free men and subjects, assert this natural and constitutional right.

It is, moreover, their humble opinion, which they express with the greatest deference to the wisdom of the Parliament, that the acts made there, imposing duties on the people of this province, with the sole and express purpose of raising a revenue, are infringements of their natural and constitutional rights; because, as they are not represented in the British Parliament, his Majesty's Commons in Britain, by those acts, grant their property without their consent.

This House further are of opinion, that their constituents, considering their local circumstances, cannot, by any possibility, be represented in the Parliament; and that it will forever be impracticable, that they should be equally represented there, and consequently, not at all; being separated by an ocean of a thousand leagues. That his Majesty's royal predecessors, for this reason, were graciously pleased to form a subordinate legislature here, that their subjects might enjoy the unalienable right of a representation: also, that considering the utter impracticability of their ever being fully and equally represented in Parliament, and the great expense that must unavoidably attend even a partial

representation there, this House think that a taxation of their constituents, even without their consent, grievous as it is, would be preferable to any representation that could be admitted for them there.

Upon these principles, and also considering that were the right in Parliament ever so clear, yet, for obvious reasons, it would be beyond the rules of equity that their constituents should be taxed, on the manufactures of Great Britain here, in addition to the duties they pay for them in England, and other advantages arising to Great Britain, from the acts of trade, this House have preferred a humble, dutiful, and loyal petition, to our most gracious sovereign, and made such representations to his Majesty's ministers, as they apprehended would tend to obtain redress.

They have also submitted to consideration, whether any people can be said to enjoy any degree of freedom, if the Crown, in addition to its undoubted authority of constituting a Governor, should appoint him such a stipend as it may judge proper, without the consent of the people, and at their expense; and whether, while the judges of the land, and other civil officers, hold not their commissions during good behaviour, their having salaries appointed for them by the Crown, independent of the people, hath not a tendency to subvert the principles of equity, and endanger the happiness and security of the subject.

In addition to these measures, the House have written a letter to their agent, which he is directed to lay before the ministry; wherein they take notice of the hardships of the act for preventing mutiny and desertion, which requires the Governor and Council to provide enumerated articles for the King's marching troops, and the people to pay the expenses; and also, the commission of the gentlemen appointed commissioners of the customs, to reside in America, which authorizes them to make as many appointments as they think fit, and to pay the appointees what sum they please, for whose mal-conduct they are not accountable; from whence it may happen, that officers of the Crown may be multiplied to such a degree as to become dangerous to the liberty of the people, by virtue of a commission, which does not appear to this House to derive any such advantages to trade as many have supposed.

These are the sentiments and proceedings of this House; and as they have too much reason to believe that the enemies of the

colonies have represented them to his Majesty's ministers, and to the Parliament, as factious, disloyal, and having a disposition to make themselves independent of the mother country, they have taken occasion, in the most humble terms, to assure his Majesty, and his ministers, that, with regard to the people of this province, and, as they doubt not, of all the colonies, the charge is unjust. The House is fully satisfied, that your Assembly is too generous and liberal in sentiment, to believe that this letter proceeds from an ambition of taking the lead, or dictating to the other assemblies. They freely submit their opinions to the judgment of others; and shall take it kind in your House to point out to them any thing further, that may be thought necessary.

This House cannot conclude, without expressing their firm confidence in the King, our common head and father; that the united and dutiful supplications of his distressed American subjects, will meet with his royal and favorable acceptance.

No. 66. Virginia Resolutions

May 16, 1769

THE various memorials and petitions of the colonial assemblies, in response to the Massachusetts circular letter, were laid before Lord Hillsborough by the colonial agents in London. The papers showed that the colonies were in hearty accord with Massachusetts; but the latter province, as the leader, was especially obnoxious to the King and the ministry. In October, 1768, two regiments of troops from Halifax arrived at Boston to support the royal government. Papers relating to the proceedings in Massachusetts, and the disturbances connected with the seizure of the sloop *Liberty* and the impressment of Americans, were laid before Parliament in November. December 15, in the House of Lords, an address to the King was moved, urging that Governor Bernard be directed to take immediate steps to apprehend the persons responsible for the late disorders, with a view to sending them to England for trial, under a statute passed in the reign of Henry VIII. for the trial of treasons committed out of the kingdom. To this the Commons, on Feb. 9, agreed. The first protest came from Virginia. The General Assembly of that colony met May 11, and on the 16th the House of Burgesses adopted the resolutions following. Thereupon the assembly was dissolved. The resolutions were transmitted to the other assemblies, however, and were generally approved, some of the assemblies adopting them entire as the best expression of their own views.

REFERENCES. — *Text* in Hutchinson's *History of Massachusetts*, III., 494. The address to the King is in *ib.*, 495, 496. The proceedings of Parliament

are in the *Parliamentary History*, XVI.; see also the *Annual Register* (1768, 1769). On the resolutions see Frothingham's *Rise of the Republic*, 233–238; Henry's *Patrick Henry*, I., chap. 6.

Resolved, nem. con. — I. THAT the sole right of imposing taxes on the inhabitants of this his majesty's colony and dominion of Virginia is now, and ever hath been, legally and constitutionally vested in the house of burgesses, lawfully convened according to the ancient and established practice, with the consent of the council, and of his majesty the king of Great Britain, or his governor for the time being.

II. That it is the undoubted privilege of the inhabitants of this colony, to petition their sovereign for redress of grievances; and that it is lawful and expedient to procure the concurrence of his majesty's other colonies in dutiful addresses, praying the royal interposition in favour of the violated rights of America.

III. That all trials for treason, misprision of treason, or for any felony or crime whatsoever committed and done in this his majesty's said colony and dominion by any person or persons residing therein, ought of right to be held and conducted in and before his majesty's courts held within his said colony, according to the fixed and known course of proceeding; and that the seizing any person or persons residing in this colony, suspected of any crime whatsoever committed therein, and sending such person or persons to places beyond the sea to be tried, is highly derogatory of the rights of British subjects, as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused.

IV. That an humble, dutiful, and loyal address be presented to his majesty, to assure him of our inviolable attachment to his sacred person and government, and to beseech his royal interposition, as the father of all his people, however remote from the seat of his empire, to quiet the minds of his loyal subjects of this colony, and to avert from them those dangers and miseries which will ensue from the seizing and carrying beyond sea any person residing in America, suspected of any crime whatsoever, to be tried in any other manner than by the ancient and long established course of proceeding.

No. 67. Virginia Resolutions

March 12, 1773

THE chief occasion of the Virginia resolutions of 1773 was the appointment of a court of inquiry, to investigate the circumstances connected with the burning of the *Gaspee* the previous June. The House of Burgesses met March 4. The resolutions, prepared by some of the younger members, among them Patrick Henry, Richard Henry Lee, Francis L. Lee, Thomas Jefferson, and Dabney Carr, were adopted on the 12th. Three days later the House was prorogued. The idea of committees of correspondence was not new, but the proposal of Virginia was the first to meet with general response from the other colonies.

REFERENCES. — *Text* in W. W. Henry's *Patrick Henry*, I., 159, 160. For the history of the resolutions see *ib.*, I., 154–168; Frothingham's *Rise of the Republic*, 276–284.

Whereas, The minds of his Majesty's faithful subjects in this colony have been much disturbed, by various rumors and reports of proceedings tending to deprive them of their ancient, legal, and constitutional right,

And whereas, The affairs of this colony are frequently connected with those of Great Britain, as well as of the neighboring colonies, which renders a communication of sentiments necessary; in order, therefore, to remove the uneasinesses, and to quiet the minds of the people, as well as for the other good purposes above mentioned,

Be it resolved, That a standing committee of correspondence and inquiry be appointed, to consist of eleven persons, to wit: the Honorable Peyton Randolph, Esquire, Robert Carter Nicholas, Richard Bland, Richard Henry Lee, Benjamin Harrison, Edmund Pendleton, Patrick Henry, Dudley Digges, Dabney Carr, Archibald Cary and Thomas Jefferson, Esquires, any six of whom to be a committee, whose business it shall be to obtain the most early and authentic intelligence of all such acts and resolutions of the British Parliament, or proceedings of Administration, as may relate to or affect the British colonies in America, and to keep up and maintain a correspondence and communication with our sister colonies, respecting these important considerations; and the result of such their proceedings, from time to time, to lay before this House.

Resolved, That it be an instruction to the said committee, that they do, without delay, inform themselves particularly of the

principles and authority on which was constituted a court of inquiry, said to have been lately held in Rhode Island, with powers to transmit persons accused of offences committed in America to places beyond the seas to be tried.

The said resolutions being severally read a second time, were, upon the question severally put thereupon, agreed to by the house, *nemine contradicente.*

Resolved, That the speaker of this house do transmit to the speakers of the different Assemblies of the British colonies on the continent, copies of the said resolutions, and desire that they will lay them before their respective Assemblies, and request them to appoint some person or persons of their respective bodies, to communicate from time to time with the said committee.

No. 68. Boston Port Act

March 31, 1774

By the Townshend Revenue Act [No. 63], a duty of 3*d.* per pound was imposed upon tea imported into the American colonies from Great Britain; but by the Tea Act [No. 64], the inland duty of 1*s.* per pound was taken off for five years, and a drawback allowed, on tea exported to America, of the entire customs duty payable on its importation into England. The duties imposed by the Revenue Act, except that on tea, were repealed in 1770. But the colonies would not buy tea shipped from England, and most of the tea consumed in America was smuggled in through the agency of the Dutch East India Company. To relieve the British East India Company from certain financial difficulties, an act was passed in May, 1773, again allowing a drawback of the duties payable on importation into England, in case the tea was shipped to America; the tax of 3*d.* per pound, however, still remaining as an assertion of the principle of the Declaratory Act of 1766 [No. 60]. Upon the passage of the act of 1773, large quantities of tea were sent to America, but its importation was generally resisted. The most violent opposition was manifested in Boston, where, on the night of Dec. 16, the ships laden with tea were boarded by citizens disguised as Indians, and the tea thrown into the harbor.

Papers relating to the disturbances in America, and especially the proceedings at Boston, were laid before Parliament March 7, 1774, accompanied by a royal message urging the adoption of measures to end the disorder and secure obedience to the laws. On the 14th Lord North, in the House of Commons, asked and obtained leave to bring in a bill to remove the custom house officers from Boston, and to close that port to commerce. A petition from William Bollan, agent for Massachusetts, praying to be heard in behalf of that colony, was laid on the table. The bill was brought in on the 18th, had its second reading on the 21st, and passed on the 25th without a division. It was taken

up to the Lords the following day, and passed that House, without a division, on the 30th. March 31 the act received the royal assent. The petition of Bollan was finally rejected by the Commons on the 25th, by a vote of 40 to 170; but he was heard in the Lords on the 30th, before the final vote on the bill. The act was repealed by the prohibitory act of 1775 [No. 80].

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXX., 336–341. The act is cited as 14 Geo. III., c. 19. For the debates in Parliament, see the *Parliamentary History*, XVII., or Force's *American Archives*, Fourth Series, I., 5–61; *cf.* also the *Annual Register* (1774). The report of the committee of the Lords on the disturbances in Massachusetts is in Force, and also in Almon's *Prior Documents*, 232–255. Franklin's *True State of the Proceedings*, etc. (*Works*, Sparks's ed., IV., 466–515), is a skilful counter-presentation.

An act to discontinue, in such manner, and for such time as are therein mentioned, the landing and discharging, lading or shipping, of goods, wares, and merchandise, at the town, and within the harbour, of Boston, *in the province of* Massachuset's Bay, *in* North America.

WHEREAS *dangerous commotions and insurrections have been fomented and raised in the town of* Boston, *in the province of* Massachuset's Bay, *in* New England, *by divers ill-affected persons, to the subversion of his Majesty's government, and to the utter destruction of the publick peace, and good order of the said town; in which commotions and insurrections certain valuable cargoes of teas, being the property of the* East India Company, *and on board certain vessels lying within the bay or harbour of* Boston, *were seized and destroyed: And whereas, in the present condition of the said town and harbour, the commerce of his Majesty's subjects cannot be safely carried on there, nor the customs payable to his Majesty duly collected; and it is therefore expedient that the officers of his Majesty's customs should be forthwith removed from the said town:* . . . be it enacted . . . , That from and after the first day of *June*, one thousand seven hundred and seventy-four, it shall not be lawful for any person or persons whatsoever to lade, put, or cause or procure to be laden or put, off or from any quay, wharf, or other place, within the said town of *Boston*, or in or upon any part of the shore of the bay, commonly called *The Harbour of Boston*, between a certain headland or point called *Nahant Point*, on the eastern side of the entrance into the said bay, and a certain other headland or point called *Alderton Point*, on the western side of the entrance into the said bay, or in

or upon any island, creek, landing-place, bank, or other place, within the said bay or headlands, into any ship, vessel, lighter, boat, or bottom, any goods, wares, or merchandise whatsoever, to be transported or carried into any other country, province, or place whatsoever, or into any other part of the said province of the *Massachuset's Bay*, in *New England;* or to take up, discharge, or lay on land, or cause or procure to be taken up, discharged, or laid on land, within the said town, or in or upon any of the places aforesaid, out of any boat, lighter, ship, vessel, or bottom, any goods, wares, or merchandise whatsoever, to be brought from any other country, province, or place, or any other part of the said province of the *Massachuset's Bay* in *New England,* upon pain of the forfeiture of the said goods, wares, and merchandise, and of the said boat, lighter, ship, vessel, or other bottom into which the same shall be put, or out of which the same shall be taken, and of the guns, ammunition, tackle, furniture, and stores, in or belonging to the same : And if any such goods, wares, or merchandise, shall, within the said town, or in any the places aforesaid, be laden or taken in from the shore into any barge, hoy, lighter, wherry, or boat, to be carried on board any ship or vessel outward-bound to any other country or province, or other part of the said province of the *Massachuset's Bay* in *New England,* or be laden or taken into such barge, hoy, lighter, wherry, or boat, from or out of any ship or vessel coming in and arriving from any other country or province, or other part of the said province of the *Massachuset's Bay* in *New England*, such barge, hoy, lighter, wherry, or boat, shall be forfeited and lost.

II. And be it further enacted . . . , That if any warfinger, or keeper of any wharf, crane, or quay, or their servants, or any of them, shall take up or land, or knowingly suffer to be taken up or landed, or shall ship off, or suffer to be water-borne, at or from any of their said wharfs, cranes, or quays, any such goods, wares, or merchandise; in every such case, all and every such warfinger, and keeper of such wharf, crane, or quay, and every person whatever who shall be assisting, or otherwise concerned in the shipping or in the loading or putting on board any boat, or other vessel, for that purpose, or in the unshipping such goods, wares, and merchandise, or to whose hands the same shall knowingly come after the loading, shipping, or unshipping thereof, shall forfeit and lose treble the value thereof, to be computed at the

highest price which such sort of goods, wares, and merchandise, shall bear at the place where such offence shall be committed, at the time when the same shall be so committed, together with the vessels and boats, and all the horses, cattle, and carriages, whatsoever made use of in the shipping, unshipping, landing, removing, carriage, or conveyance of any of the aforesaid goods, wares, and merchandise.

III. And be it further enacted . . . , That if any ship or vessel shall be moored or lie at anchor, or be seen hovering within the said bay, described and bounded as aforesaid, or within one league from the said bay so described, or the said headlands, or any of the islands lying between or within the same, it shall and may be lawful for any admiral, chief commander, or commissioned officer, of his Majesty's fleet or ships of war, or for any officer of his Majesty's customs, to compel such ship or vessel to depart to some other port or harbour, or to such station as the said officer shall appoint, and to use such force for that purpose as shall be found necessary: And if such ship or vessel shall not depart accordingly, within six hours after notice for that purpose given by such person as aforesaid, such ship or vessel, together with all the goods laden on board thereon, and all the guns, ammunition, tackle, and furniture, shall be forfeited and lost, whether bulk shall have been broken or not.

IV. Provided always, That nothing in this act contained shall extend, or be construed to extend, to any military or other stores for his Majesty's use, or to the ships or vessels whereon the same shall be laden, which shall be commissioned by, and in the immediate pay of, his Majesty, his Heirs or successors; nor to any fuel or victual brought coastwise from any part of the continent of *America*, for the necessary use and sustenance of the inhabitants of the said town of *Boston*, provided the vessel wherein the same are to be carried shall be duly furnished with a cocket and let-pass, after having been duly searched by the proper officers of his Majesty's customs at *Marblehead*, in the port of *Salem*, in the said province of *Massachuset's Bay;* and that some officer of his Majesty's customs be also there put on board the said vessel, who is hereby authorised to go on board, and proceed with the said vessel, together with a sufficient number of persons, properly armed, for his defence, to the said town or harbour of *Boston;* nor to any ships or vessels which may happen

to be within the said harbour of *Boston* on or before the first day of *June*, one thousand seven hundred and seventy-four, and may have either laden or taken on board, or be there with intent to load or take on board, or to land or discharge any goods, wares, and merchandise, provided the said ships and vessels do depart the said harbour within fourteen days after the said first day of *June*, one thousand seven hundred and seventy-four.

V. And be it further enacted . . . , That all seizures, penalties, and forfeitures, inflicted by this act, shall be made and prosecuted by any admiral, chief commander, or commissioned officer, of his Majesty's fleet, or ships of war, or by the officers of his Majesty's customs, or some of them, or by some other person deputed or authorised, by warrant from the lord high treasurer, or the commissioners of his Majesty's treasury for the time being, and by no other person whatsoever: And if any such officer, or other person authorised as aforesaid, shall, directly or indirectly, take or receive any bribe or reward, to connive at such lading or unlading, or shall make or commence any collusive seizure, information, or agreement for that purpose, or shall do any other act whatsoever, whereby the goods, wares, or merchandise, prohibited as aforesaid, shall be suffered to pass, either inwards or outwards, or whereby the forfeitures and penalties inflicted by this act may be evaded, every such offender shall forfeit the sum of five hundred pounds for every such offence, and shall become incapable of any office or employment, civil or military; and every person who shall give, offer, or promise, any such bribe or reward, or shall contract, agree, or treat with any person, so authorised as aforesaid, to commit any such offence, shall forfeit the sum of fifty pounds.

[Sec. VI. provides for the prosecution and recovery of penalties under this act.]

VII. And be it further enacted . . . , That every charter party bill of loading, and other contract for consigning shipping, or carrying any goods, wares, and merchandise whatsoever, to or from the said town of *Boston*, or any part of the bay or harbour thereof, described as aforesaid, which have been made or entered into, or which shall be made or entered into, so long as this act shall remain in full force, relating to any ship which shall arrive at the said town or harbour, after the first day of *June*, one thousand seven hundred and seventy-four, shall be, and the same are hereby

declared to be, utterly void, to all intents and purposes whatsoever.

VIII. And be it further enacted . . . , That whenever it shall be made to appear to his Majesty, in his privy council, that peace and obedience to the laws shall be so far restored in the said town of *Boston*, that the trade of *Great Britain* may safely be carried on there, and his Majesty's customs duly collected, and his Majesty, in his privy council, shall adjudge the same to be true, it shall and may be lawful for his Majesty, by proclamation, or order of council, to assign and appoint the extent, bounds, and limits, of the port or harbour of *Boston*, and of every creek or haven within the same, or in the islands within the precincts thereof; and also to assign and appoint such and so many open places, quays, and wharfs, within the said harbour, creeks, havens, and islands, for the landing, discharging, lading, and shipping of goods, as his Majesty, his heirs or successors, shall judge necessary and expedient; and also to appoint such and so many officers of the customs therein as his Majesty shall think fit; after which it shall be lawful for any person or persons to lade or put off from, or to discharge and land upon, such wharfs, quays, and places, so appointed within the said harbour, and none other, any goods, wares, and merchandise whatever.

IX. Provided always, That if any goods, wares, or merchandise, shall be laden or put off from, or discharged or landed upon, any other place than the quays, wharfs, or places, so to be appointed, the same, together with the ships, boats, and other vessels employed therein, and the horses, or other cattle and carriages used to convey the same, and the person or persons concerned or assisting therein, or to whose hands the same shall knowingly come, shall suffer all the forfeitures and penalties imposed by this or any other act on the illegal shipping or landing of goods.

X. Provided also, and it is hereby declared and enacted, That nothing herein contained shall extend, or be construed, to enable his Majesty to appoint such port, harbour, creeks, quays, wharfs, places, or officers, in the said town of *Boston*, or in the said bay or islands, until it shall sufficiently appear to his Majesty that full satisfaction hath been made by or on behalf of the inhabitants of the said town of *Boston* to the united company of merchants of *England* trading to the *East Indies*, for the damage

sustained by the said company by the destruction of their goods sent to the said town of *Boston*, on board certain ships or vessels as aforesaid; and until it shall be certified to his Majesty, in council, by the governor, or lieutenant governor, of the said province, that reasonable satisfaction hath been made to the officers of his Majesty's revenue, and others, who suffered by the riots and insurrections above mentioned, in the months of *November* and *December*, in the year one thousand seven hundred and seventy-three, and in the month of *January*, in the year one thousand seven hundred and seventy-four.

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No. 69. Massachusetts Government Act

May 20, 1774

MARCH 28, 1774, Lord North moved in the House of Commons for leave to bring in a bill "for the better regulating the government of the Province of Massachusetts Bay." Leave was given, and April 15 the bill was presented. The bill had its second reading on the 22d, and May 2, after spirited debate, was ordered to its third reading by a vote of 239 to 64, and passed. A petition from Bollan, April 28, for delay until he could hear from Massachusetts, was refused, the vote being 32 to 95. The bill had its second reading in the Lords May 6; on the 11th, by a vote of 92 to 20, the third reading was ordered, and the bill, with some amendments, passed. Eleven Lords entered a protest against the bill. On the 13th the Commons agreed to the amendments of the Lords, and on the 20th the act received the royal assent.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXX., 381–390. The act is cited as 14 Geo. III., c. 45. For the debates, see the *Parliamentary History*, XVII., or Force's *American Archives*, Fourth Series, I., 66–104; see also the *Annual Register* (1774).

An act for the better regulating the government of the province of the Massachuset's Bay, *in* New England.

WHEREAS *by letters patent under the great seal of* England, *made in the third year of the reign of their late majesties* King William *and* Queen Mary, *for uniting, erecting, and incorporating, the several colonies, territories, and tracts of land therein mentioned, into one real province, by the name of* Their Majesties Province of the *Massachuset's Bay*, in *New England; whereby it was, amongst other things, ordained and established, that the gover-*

nor of the said province should, from thenceforth, be appointed and commissionated by their Majesties, their heirs and successors: It was, however, granted and ordained, That, from the expiration of the term for and during which the eight and twenty persons named in the said letters patent were appointed to be the first counsellors or assistants to the governor of the said province for the time being, the aforesaid number of eight and twenty counsellors or assistants should yearly, once in every year, for ever thereafter, be, by the general court or assembly, newly chosen: And whereas the said method of electing such counsellors or assistants, to be vested with the several powers, authorities, and privileges, therein mentioned, although conformable to the practice theretofore used in such of the colonies thereby united, in which the appointment of the respective governors had been vested in the general courts or assemblies of the said colonies, hath, by repeated experience, been found to be extremely ill adapted to the plan of government established in the province of the Massachuset's Bay, *by the said letters patent hereinbefore mentioned, and hath been so far from contributing to the attainment of the good ends and purposes thereby intended, and to the promoting of the internal welfare, peace, and good government, of the said province, or to the maintenance of the just subordination to, and conformity with, the laws of* Great Britain, *that the manner of exercising the powers, authorities, and privileges aforesaid, by the persons so annually elected, hath, for some time past, been such as had the most manifest tendency to obstruct, and, in great measure, defeat, the execution of the laws; to weaken the attachment of his Majesty's well-disposed subjects in the said province to his Majesty's government, and to encourage the ill-disposed among them to proceed even to acts of direct resistance to, and defiance of, his Majesty's authority: And it hath accordingly happened, that an open resistance to the execution of the laws hath actually taken place in the town of* Boston, *and the neighbourhood thereof, within the said Province: And whereas it is, under these circumstances, become absolutely necessary, in order to the preservation of the peace and good order of the said province, the protection of his Majesty's well-disposed subjects therein resident, the continuance of the mutual benefits arising from the commerce and correspondence between this kingdom and the said province, and the maintaining of the just dependence of the said province upon the crown and parliament of* Great Britain, *that the said method of annually*

electing the counsellors or assistants of the said Province should no longer be suffered to continue, but that the appointment of the said counsellors or assistants should henceforth be put upon the like footing as is established in such other of his Majesty's colonies or plantations in America, *the governors whereof are appointed by his Majesty's commission, under the great seal of* Great Britain: Be it therefore enacted . . . , that from and after the first day of *August*, one thousand seven hundred and seventy-four, so much of the charter, granted by their majesties King *William* and Queen *Mary* to the inhabitants of the said province of the *Massachuset's Bay*, in *New England*, and all and every clause, matter, and thing, therein contained, which relates to the time and manner of electing the assistants or counsellors for the said province, be revoked, and is hereby revoked and made void and of none effect; and that the offices of all counsellors and assistants, elected and appointed in pursuance thereof, shall from thenceforth cease and determine: And that, from and after the said first day of *August*, one thousand seven hundred and seventy-four, the council, or court of assistants of the said province for the time being, shall be composed of such of the inhabitants or proprietors of lands within the same as shall be thereunto nominated and appointed by his Majesty, his heirs and successors, from time to time, by warrant under his or their signet or sign manual, and with the advice of the privy council, agreeable to the practice now used in respect to the appointment of counsellors in such of his Majesty's other colonies in *America*, the governors whereof are appointed by commission under the great seal of *Great Britain:* provided, that the number of the said assistants or counsellors shall not, at any one time, exceed thirty-six, nor be less than twelve.

II. And it is hereby further enacted, That the said assistants or counsellors, so to be appointed as aforesaid, shall hold their offices respectively, for and during the pleasure of his Majesty, his heirs or successors; and shall have and enjoy all the powers, privileges, and immunities, at present held, exercised, and enjoyed, by the assistants or counsellors of the said province, constituted and elected, from time to time, under the said charter, (except as herein-after excepted); and shall also, upon their admission into the said council, and before they enter upon the execution of their offices respectively, take the oaths, and make,

repeat, and subscribe, the declarations required, as well by the said charter as by any law or laws of the said province now in force, to be taken by the assistants or counsellors who have been so elected and constituted as aforesaid.

III. And be it further enacted . . . , That from and after the first day of *July*, one thousand seven hundred and seventy-four, it shall and may be lawful for his Majesty's governor for the time being of the said province, or, in his absence, for the lieutenant-governor, to nominate and appoint, under the seal of the province, from time to time, and also to remove, without the consent of the council, all judges of the inferior courts of common pleas, commissioners of *Oyer* and *Terminer*, the attorney general, provosts, marshals, justices of the peace, and other officers to the council or courts of justice belonging; and that all . . . [the said officers] . . . , and other officers so appointed . . . , shall and may have, hold, and exercise, their said offices, powers, and authorities, as fully and completely, to all intents and purposes, as any judges of the inferior courts of common pleas, commissioners of *Oyer* and *Terminer*, attorney general, provosts, marshals, or other officers, have or might have done heretofore under the said letters patent, in the third year of the reign of their late majesties King *William* and Queen *Mary;* any law, statute, or usage, to the contrary notwithstanding.

IV. [Provided, that the foregoing shall not be construed to annul any commission granted prior to July 1, 1774.]

V. And be it further enacted . . . , That, from and after . . . [July 1, 1774] . . . , it shall and may be lawful for his Majesty's governor, or, in his absence, for the lieutenant-governor for the time being of the said province, from time to time, to nominate and appoint the sheriffs without the consent of the council, and to remove such sheriffs with such consent, and not otherwise.

VI. And be it further enacted . . . , That, upon every vacancy of the offices of chief justice and judges of the superior court of the said province, from and after . . . [July 1, 1774] . . . , the governor for the time being, or, in his absence, the lieutenant-governor, without the consent of the council, shall have full power and authority to nominate and appoint the persons to succeed to the said offices, who shall hold their commissions during the pleasure of his Majesty . . . ; and that neither the chief justice or judges appointed before . . . [July 1, 1774] . . . , nor those

who shall hereafter be appointed pursuant to this act, shall be removed, unless by the order of his Majesty. . . .

VII. *And whereas, by several acts of the general court, which have been from time to time enacted and passed within the said province, the freeholders and inhabitants of the several townships, districts, and precincts, qualified, as is therein expressed, are authorized to assemble together, annually, or occasionally, upon notice given, in such manner as the said acts direct, for the choice of selectmen, constables, and other officers, and for the making and agreeing upon such necessary rules, orders, and bye-laws, for the directing, managing, and ordering, the prudential affairs of such townships, districts, and precincts, and for other purposes: and whereas a great abuse has been made of the power of calling such meetings, and the inhabitants have, contrary to the design of their institution, been misled to treat upon matters of the most general concern, and to pass many dangerous and unwarrantable resolves:* for remedy whereof, be it enacted, that from and after the said first day of *August*, one thousand seven hundred and seventy-four, no meeting shall be called by the select men, or at the request of any number of freeholders of any township, district, or precinct, without the leave of the governor, or, in his absence, of the lieutenant-governor, in writing, expressing the special business of the said meeting, first had and obtained, except the annual meeting in the months of *March* or *May*, for the choice of select men, constables, and other officers, or except for the choice of persons to fill up the offices aforesaid, on the death or removal of any of the persons first elected to such offices, and also, except any meeting for the election of a representative or representatives in the general court; and that no other matter shall be treated of at such meetings, except the election of their aforesaid officers or representatives, nor at any other meeting, except the business expressed in the leave given by the governor, or, in his absence, by the lieutenant-governor.

VIII. *And whereas the method at present used in the province of* Massachuset's Bay, *in* America, *of electing persons to serve on grand juries, and other juries, by the freeholders and inhabitants of the several towns, affords occasion for many evil practices, and tends to pervert the free and impartial administration of justice:* for remedy whereof, be it further enacted . . . , That from and after the respective times appointed for the holding of the general

sessions of the peace in the several counties within the said province, next after the month of *September,* one thousand seven hundred and seventy-four, the jurors to serve at the superior courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferior court of common pleas, in the several counties within the said province, shall not be elected, nominated, or appointed, by the freeholders and inhabitants of the several towns within the said respective counties, nor summoned or returned by the constables of the said towns; but that, from thenceforth, the jurors to serve at . . . [the said courts] . . . shall be summoned and returned by the sheriffs of the respective counties within the said province; and all writs of *Venire Facias,* or other process or warrants to be issued for the return of jurors to serve at the said courts, shall be directed to the sheriffs of the said counties respectively, any law, custom, or usage, to the contrary notwithstanding.

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X. *And that all sheriffs may be better informed of persons qualified to serve on juries* . . . [at the aforesaid courts] . . . , be it further enacted . . . , That the constables of the respective towns, within the several counties of the said province, shall, at the general sessions of the peace to be holden for each county, next after the month of *September* in every year, upon the first day of the said sessions, return and deliver to the justices of the peace, in open court, a true list, in writing, of the names and places of abode of all persons within the respective towns for which they serve, or the districts thereof, qualified to serve upon juries, with their titles and additions, between the age of one and twenty years and the age of seventy years; which said justices, or any two of them, at the said sessions in the respective counties, shall cause to be delivered a duplicate of the aforesaid lists, by the clerk of the peace of every county, to the sheriffs, or their deputies, within ten days after such sessions; and cause each of the said lists to be fairly entered into a book, by the clerk of the peace, to be by him provided, and kept for that purpose amongst the records of the said court; and no sheriff shall impannel or return any person or persons to serve upon any grand jury, or petit jury, whatsoever, in any of the said courts that shall not be named or mentioned in such list: and, to prevent the failure of justice, through the neglect of constables to make such returns

of persons qualified to serve on juries, as in and by this act is directed, the clerks of the peace of the said several counties are hereby required and commanded, twenty days at least next before the month of *September*, yearly, and every year, to issue forth precepts or warrants, under their respective hands and seals, to the respective constables of the several towns within the said respective counties, requiring them . . . to make such return of persons qualified to serve upon juries as hereby respectively directed; and every constable failing at any time to make and deliver such return to the justices in open court, as aforesaid, shall forfeit and incur the penalty of five pounds sterling to his Majesty . . . ; and, in order that the constables may be the better enabled to make complete lists of all persons qualified to serve on juries, the constables of the several towns shall have free liberty, at all seasonable times, upon request by them made to any officer or officers, who shall have in his or their custody any book or account of rates or taxes on the freeholders or inhabitants within such respective towns, to inspect the same, and take from thence the names of such persons qualified to serve on juries, dwelling within the respective towns for which such lists are to be given in and returned pursuant to this act; and shall, in the month of *September*, yearly, and every year, upon two or more *Sundays*, fix upon the door of the church, chapel, and every other publick place of religious worship within their respective precincts, a true and exact list of all such persons intended to be returned to the said general sessions of the peace, as qualified to serve on juries, pursuant to the directions of this act; and leave at the same time a duplicate of such list with the town clerk of the said place, to be perused by the freeholders and inhabitants thereof, to the end that notice may be given of persons duly qualified who are omitted, or of persons inserted by mistake who ought to be omitted out of such lists; and it shall and may be lawful to and for the justices, at the general sessions of the peace to which the said list shall be so returned, upon due proof made before them of any person or persons duly qualified to serve on juries being omitted in such lists, or of any person or persons being inserted therein who ought to have been omitted, to order his or their name or names to be inserted or struck out, as the case may require: and in case any constable shall wilfully omit, out of such list, any person or persons, whose name or names

ought to be inserted, or shall wilfully insert any person or persons who ought to be omitted, every constable so offending, shall, for every person so omitted or inserted in such list, contrary to the true intent and meaning of this act, be fined by the said justices, in the said general sessions of the peace, in the sum of forty shillings sterling.

XI. Provided always . . . , That in case default shall at any time hereafter be made, by any constable or constables, to return lists of persons qualified to serve on juries within any of the said towns to the said court of general sessions of the peace; then, and in such case, it shall and may be lawful for the sheriff of the county, in which such default shall be made, to summon and return to the several courts aforesaid, or any of them, such and so many persons dwelling in such towns, or the districts thereof, qualified to serve on juries, as he shall think fit to serve on juries in such respective courts. . . .

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XIII. Provided always, and be it further enacted . . . , That in case a sufficient number of persons qualified to serve on juries shall not appear at the said courts, or any of them, to perform the service of grand or petit jurors; that then, and in such case, it shall be lawful for the said court to issue a writ or precept to the sheriff, requiring him to summon a sufficient number of other persons qualified to serve on juries, immediately to appear at such court, to fill up and complete the number of jurors to serve at such court; and such persons are hereby required to appear and serve as jurors at the said courts accordingly.

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XVII. And be it further enacted . . . , That in case any person summoned to serve upon the grand or petit jury, at any of the courts aforesaid, or upon the jury in any prosecution, action, or suit, depending in any of the said courts, shall not appear and serve at the said courts, according to the said summons, (not having any reasonable excuse to be allowed by the judges or justices at such court,) he shall be fined . . . in any sum not exceeding the sum of ten pounds, nor less than twenty shillings sterling.

[The remaining sections relate to the drawing of jurors, the impanelling of special juries, and other details.]

No. 70. Administration of Justice Act

May 20, 1774

APRIL 15, 1774, the bill for regulating the government of Massachusetts having been presented in the House of Commons, Lord North moved for leave to bring in, "as the last measure that Parliament will take," a bill "for the impartial administration of justice, in the cases of persons questioned for any acts done by them in the execution of the laws, or for the suppression of the riots and tumults," in the Massachusetts colony. Leave being given, the bill was brought in on the 21st, had its second reading on the 25th, and May 6 passed, by a vote of 127 to 24. On the 9th it was carried up to the Lords, where it was read a second time on the 13th, and on the 18th passed, the vote being 43 to 12. Eight members of the Lords entered a protest against the bill. May 20 the act received the royal assent. Throughout the debate the attendance in each house was small.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXX., 367–371. The act is cited as 14 Geo. III., c. 39. The debates are in the *Parliamentary History*, XVII., and Force's *American Archives*, Fourth Series, I., 111–129; see also the *Annual Register* (1774).

An act for the impartial administration of justice in the cases of persons questioned for any acts done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachuset's Bay, *in* New England.

WHEREAS *in his Majesty's province of* Massachuset's Bay, *in* New England, *an attempt hath lately been made to throw off the authority of the parliament of* Great Britain *over the said province, and an actual and avowed resistance, by open force, to the execution of certain acts of parliament, hath been suffered to take place, uncontrouled and unpunished, in defiance of his Majesty's authority, and to the utter subversion of all lawful government: and whereas, in the present disordered state of the said province, it is of the utmost importance to the general welfare thereof, and to the re-establishment of lawful authority throughout the same, that neither the magistrates acting in support of the laws, nor any of his Majesty's subjects aiding and assisting them therein, or in the suppression of riots and tumults, raised in opposition to the execution of the laws and statutes of this realm, should be discouraged from the proper discharge of their duty, by an apprehension, that in case of their being questioned for any acts done therein, they may be liable to be brought to trial for the same before persons who do*

not acknowledge the validity of the laws, in the execution thereof, or the authority of the magistrate in support of whom, such acts had been done: in order therefore to remove every such discouragement from the minds of his Majesty's subjects, and to induce them, upon all proper occasions, to exert themselves in support of the public peace of the province, and of the authority of the King and Parliament of Great Britain *over the same;* be it enacted . . . , That if any inquisition or indictment shall be found, or if any appeal shall be sued or preferred against any person, for murther, or other capital offence, in the province of the *Massachuset's Bay*, and it shall appear, by information given upon oath to the governor, or, in his absence, to the lieutenant-governor of the said province, that the fact was committed by the person against whom such inquisition or indictment shall be found, or against whom such appeal shall be sued or preferred, as aforesaid, either in the execution of his duty as a magistrate, for the suppression of riots, or in the support of the laws of revenue, or in acting in his duty as an officer of revenue, or in acting under the direction and order of any magistrate, for the suppression of riots, or for the carrying into effect the laws of revenue, or in aiding and assisting in any of the cases aforesaid; and if it shall also appear, to the satisfaction of the said governor, or lieutenant-governor respectively, that an indifferent trial cannot be had within the said province, in that case, it shall and may be lawful for the governor, or lieutenant-governor, to direct, with the advice and consent of the council, that the inquisition, indictment, or appeal, shall be tried in some other of his Majesty's colonies, or in *Great Britain;* and for that purpose, to order the person against whom such inquisition or indictment shall be found, or against whom such appeal shall be sued or preferred, as aforesaid, to be sent, under sufficient custody, to the place appointed for his trial, or to admit such person to bail, taking a recognizance, (which the said governor, or, in his absence, the lieutenant-governor, is hereby authorised to take,) from such person, with sufficient sureties, to be approved of by the said governor, or . . . lieutenant-governor, in such sums of money as the said governor, or . . . lieutenant-governor, shall deem reasonable, for the personal appearance of such person, if the trial shall be appointed to be had in any other colony, before the governor, or lieutenant-governor, or commander in chief of such colony; and if the trial shall be appointed to be had in

Great Britain, then before his Majesty's court of *King's Bench*, at a time to be mentioned in such recognizances; and the governor, or lieutenant-governor, or commander in chief of the colony where such trial shall be appointed to be had, or court of *King's Bench*, where the trial is appointed be had in *Great Britain*, upon the appearance of such person, according to such recognizance, or in custody, shall either commit such person, or admit him to bail, until such trial . . .

II. *And, to prevent a failure of justice, from the want of evidence on the trial of any such inquisition, indictment or appeal*, be it further enacted, That the governor, or, in his absence, the lieutenant-governor, shall, and he is hereby authorised and required, to bind in recognizances to his Majesty all such witnesses as the prosecutor or person against whom such inquisition or indictment shall be found, or appeal sued or preferred, shall desire to attend the trial of the said inquisition, indictment, or appeal, for their personal appearance, at the time and place of such trial, to give evidence: and the said governor, or . . . lieutenant-governor, shall thereupon appoint a reasonable sum to be allowed for the expences of every such witness, and shall thereupon give to each witness a certificate, in writing, under his hand and seal, that such witness has entered into a recognizance to give evidence, and specifying the sum allowed for his expences; and the collector and collectors of the customs, or one of them, within the said province, upon the delivery of such certificate, are, and is hereby authorised and required, forthwith to pay to such witness the sum specified therein for his expences.

III. [Witnesses to be free from arrest while going to and returning from the place of trial.]

IV. And be it further enacted . . . , That all and every his Majesty's justices of the peace, and other justices and coroners, before whom any person shall be brought, charged with murther, or other capital crime, where it shall appear by proof, on oath, to such justices or coroners, that the fact was committed by such person, either in the execution of his duty as a magistrate, for the suppression of riots, or in the support of the laws of revenue, or in acting in his duty as an officer of revenue, or in acting under the direction and order of any magistrate, for the suppression of riots, or for the carrying into effect the laws of revenue, or in aiding and assisting in any of the cases aforesaid, are hereby

authorised and required to admit every such person so brought before him or them, as aforesaid, to bail; any law, custom, or usage, to the contrary thereof in any-wise notwithstanding.

V. And be it further enacted . . . , That where it shall be made appear to the judges or justices of any court, within the said province of *Massachuset's Bay*, by any person [charged with crimes as aforesaid], that he intends to make application to the governor, or lieutenant-governor of the said province, that such inquisition, indictment, or appeal, may be tried in some other of his Majesty's colonies, or in *Great Britain*, the said judges or justices are hereby authorised and required to adjourn or postpone the trial of such inquisition, indictment, or appeal, for a reasonable time, and admit the person to bail, in order that he may make application to the governor, or lieutenant-governor, for the purpose aforesaid.

VI. [The governor to transmit papers, in cases provided for by this act, to the governor of that colony in which the trial is to be had, or to one of the secretaries of state in England, as the case may be; the trial to proceed as if the offence had been committed at the place of trial.]

VII. And be it enacted . . . , That in case, on account of any error or defect in any indictment, which, in virtue or under the authority of this act, shall be transmitted to any other colony, or to *Great Britain*, the same shall be quashed, or judgement thereon arrested, or such indictment adjudged bad upon demurrer, it shall and may be lawful to prefer a new indictment or indictments against the person or persons accused in the said colony, to which such indictment, so quashed or adjudged bad, shall have been transmitted, or before the grand jury of any county in *Great Britain*, in case such former indictment shall have been transmitted to Great Britain, in the same manner as could be done in case the party accused should return to the place where the offence was committed; and the grand jury and petty jury of such other colony or county in *Great Britain* shall have power to find and proceed upon such indictment or indictments, in the same manner as if the offence, by such indictment or indictments charged, had been committed within the limits of the colony or county for which such juries shall respectively be impanelled to serve.

VIII. And be it further enacted . . . , That this act . . . shall

commence and take effect upon the first day of *June*, one thousand seven hundred and seventy-four; and be, and continue in force, for and during the term of three years.

No. 71. Quartering Act

June 2, 1774

A BILL "for the better providing suitable quarters" for troops in America was presented to the House of Commons April 29, 1774, and passed that body May 9, without a division. On the 26th the bill passed the Lords, by a vote of 57 to 16, and June 2 received the royal assent by commission. The object of the act was "to facilitate the establishment of a temporary military government in Massachusetts."

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXX., 410. The act is cited as 14 Geo. III., c. 54. The *Parliamentary History*, XVII., and Force's *American Archives*, Fourth Series, I., 165–170, give the proceedings in Parliament.

An act for the better providing suitable quarters for officers and soldiers in his Majesty's service in North America.

WHEREAS *doubts have been entertained, whether troops can be quartered otherwise than in barracks, in case barracks have been provided sufficient for the quartering of all the officers and soldiers within any town, township, city, district, or place, within his Majesty's dominions in* North America: *And whereas it may frequently happen, from the situation of such barracks, that, if troops should be quartered therein, they would not be stationed where their presence may be necessary and required:* be it therefore enacted . . . , That, in such cases, it shall and may be lawful for the persons who now are, or may be hereafter, authorized by law, in any of the provinces within his Majesty's dominions in *North America*, and they are hereby respectively authorized, impowered, and directed, on the requisition of the officer who, for the time being, has the command of his Majesty's forces in *North America*, to cause any officers or soldiers in his Majesty's service to be quartered and billetted in such manner as is now directed by law, where no barracks are provided by the colonies.

II. And be it further enacted . . . , That if it shall happen at any time that any officers or soldiers in his Majesty's service shall

remain within any of the said colonies without quarters, for the space of twenty-four hours after such quarters shall have been demanded, it shall and may be lawful for the governor of the province to order and direct such and so many uninhabited houses, out-houses, barns, or other buildings, as he shall think necessary to be taken, (making a reasonable allowance for the same), and make fit for the reception of such officers and soldiers, and to put and quarter such officers and soldiers therein, for such time as he shall think proper.

III. And be it further enacted . . . , That this act, and every thing herein contained, shall continue and be in force, in all his Majesty's dominions in *North America*, until the twenty-fourth day of *March*, one thousand seven hundred and seventy-six.

No. 72. Declaration and Resolves of the First Continental Congress

October 14, 1774

JUNE 17, 1774, the Massachusetts House of Representatives, under the leadership of Samuel Adams, resolved: "That a meeting of committees from the several colonies on this continent is highly expedient and necessary, to consult upon the present state of the colonies, and the miseries to which they are and must be reduced by the operation of certain acts of Parliament respecting America, and to deliberate and determine upon wise and proper measures, to be by them recommended to all the colonies, for the recovery and establishment of their just rights and liberties, civil and religious, and the restoration of union and harmony between Great Britain and the colonies, most ardently desired by all good men: Therefore, resolved, that the Hon. James Bowdoin, Esq., the Hon. Thomas Cushing, Esq., Mr. Samuel Adams, John Adams and Robert Treat Paine, Esqrs., be, and they are hereby appointed a committee on the part of this province, for the purposes aforesaid, any three of whom to be a quorum, to meet such committees or delegates from the other colonies as have been or may be appointed, either by their respective houses of burgesses or representatives, or by convention, or by the committees of correspondence appointed by the respective houses of assembly, in the city of Philadelphia, or any other place that shall be judged most suitable by the committee, on the 1st day of September next; and that the speaker of the house be directed, in a letter to the speakers of the houses of burgesses or representatives in the several colonies, to inform them of the substance of these resolves."

In accordance with this call, delegates from all the colonies except North

Carolina and Georgia met at Philadelphia September 5; representatives from North Carolina appearing on the 14th. On the 7th, a committee of two from each colony was appointed "to state the rights of the colonies in general, the several instances in which those rights are violated or infringed, and the means most proper to be pursued for obtaining a restoration of them." A report under this resolution was brought in on the 22d, and read. On the 24th, however, it was voted "that the Congress do confine themselves, at present, to the consideration of such rights as have been infringed by acts of the British Parliament since the year 1763." A report in accordance with this vote being brought in and read, further consideration was postponed while the Congress deliberated "on the means most proper to be used for a restoration" of colonial rights. The report on the rights and grievances of the colonies was finally taken up October 12, and on the 14th agreed to in the form following.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 26–30. The record of proceedings in the journal is meagre; for additional details see Frothingham's *Rise of the Republic*, 331–391; John Adams's diary, in his *Works*, II., 340–404; and lives and works of members of the Congress. The instructions to the Virginia delegates, in Jefferson's *Writings* (ed. 1830), I., 100–116, are especially significant.

Whereas, since the close of the last war, the British parliament, claiming a power, of right, to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various pretences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependant on the crown alone for their salaries, and standing armies kept in times of peace: And whereas it has lately been resolved in parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned:

And whereas, in the last session of parliament, three statutes were made; one entitled, "An act to discontinue, in such manner

and for such time as are therein mentioned, the landing and discharging, lading, or shipping of goods, wares and merchandize, at the town, and within the harbour of Boston, in the province of Massachusetts-Bay in North-America;" another entitled, "An act for the better regulating the government of the province of Massachusetts-Bay in New England;" and another entitled, "An act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachusetts-Bay in New England;" and another statute was then made, "for making more effectual provision for the government of the province of Quebec, &c." All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights:

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt, by his Majesty's ministers of state:

The good people of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent, and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted, and appointed deputies to meet, and sit in general Congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted: Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties, DECLARE,

That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS:

Resolved, N. C. D. 1. That they are entitled to life, liberty and property: and they have never ceded to any for-

eign power whatever, a right to dispose of either without their consent.

Resolved, N. C. D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England.

Resolved, N. C. D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.

Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed: But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British parliament, as are bona fide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent.

Resolved, N. C. D. 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, N. C. D. 7. That these, his majesty's colonies, are likewise entitled to all the immunities and privileges granted

and confirmed to them by royal charters, or secured by their several codes of provincial laws.

Resolved, N. C. D. 8. That they have a right peaceably to assemble, consider of their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

Resolved, N. C. D. 9. That the keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

Resolved, N. C. D. 10. It is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other; that, therefore, the exercise of legislative power in several colonies, by a council appointed, during pleasure, by the crown, is unconstitutional, dangerous and destructive to the freedom of American legislation.

All and each of which the aforesaid deputies, in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by their representatives in their several provincial legislatures.

In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire, that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war, which demonstrate a system formed to enslave America.

Resolved, N. C. D. That the following acts of parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great-Britain and the American colonies, viz.

The several acts of 4 Geo. III. ch. 15. and ch. 34.—5 Geo. III. ch. 25. — 6 Geo. III. ch. 52. — 7 Geo. III. ch. 41. and ch. 46. — 8 Geo. III. ch. 22. which impose duties for the purpose of raising a revenue in America, extend the power of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorise the judges certificate to indemnify the

prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights.

Also 12 Geo. III. ch. 24. intituled, "An act for the better securing his majesty's dockyards, magazines, ships, ammunition, and stores," which declares a new offence in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorising the trial of any person, charged with the committing any offence described in the said act, out of the realm, to be indicted and tried for the same in any shire or county within the realm.

Also the three acts passed in the last session of parliament, for stopping the port and blocking up the harbour of Boston, for altering the charter and government of Massachusetts-Bay, and that which is entitled, "An act for the better administration of justice, &c."

Also the act passed in the same session for establishing the Roman Catholic religion, in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger, (from so total a dissimilarity of religion, law and government) of the neighbouring British colonies, by the assistance of whose blood and treasure the said country was conquered from France.

Also the act passed in the same session, for the better providing suitable quarters for officers and soldiers in his majesty's service, in North-America.

Also, that the keeping a standing army in several of these colonies, in time of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

To these grievous acts and measures, Americans cannot submit, but in hopes their fellow subjects in Great-Britain will, on a revision of them, restore us to that state, in which both countries found happiness and prosperity, we have for the present, only resolved to pursue the following peaceable measures: 1. To enter into a non-importation, non-consumption, and non-exportation agreement or association. 2. To prepare an address to the people of Great-Britain, and a memorial to the inhabitants of British America: and 3. To prepare a loyal address to his majesty, agreeable to resolutions already entered into.

No. 73. The Association

October 20, 1774

SEPTEMBER 22, 1774, the Continental Congress unanimously voted to "request the merchants and others, in the several colonies, not to send to Great Britain any orders for goods, and to direct the execution of all orders already sent to be delayed or suspended, until the sense of the Congress on the means to be taken for the preservation of the liberties of America is made public." On the 27th it was resolved "that from and after the first day of December next, there be no importation into British America, from Great Britain or Ireland, of any goods, wares or merchandize whatever, or from any other place of any such goods, wares or merchandizes as shall have been exported from Great Britain or Ireland, and that no such goods, wares or merchandizes imported after the said first day of December next be used or purchased." A resolution of September 30 declared that exportation to Great Britain, Ireland, and the West Indies ought to cease from and after Sept. 10, 1775, "unless the grievances of America are redressed before that time;" and a committee was appointed "to bring in a plan for carrying into effect the non-importation, non-consumption and non-exportation resolved on." October 6 the committee were directed to include in their plan a clause prohibiting the importation, after December 1, of molasses, coffee and pimento from the British plantations or Dominica, wines from Madeira and the Western Islands, and foreign indigo. The report of the committee was brought in October 12, and on the 18th was agreed to; on the 20th it was signed by fifty-three members of the Congress.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 31–35. For references, see under No. 72, *ante*. Numerous documents relating to the observance of the Association in the different colonies are collected in Force's *American Archives*, Fourth Series, I., II.

WE, his majesty's most loyal subjects, the delegates of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties of Newcastle, Kent and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, deputed to represent them in a continental Congress, held in the city of Philadelphia, on the fifth day of September, 1774, avowing our allegiance to his majesty, our affection and regard for our fellow-subjects in Great Britain and elsewhere, affected with the deepest anxiety, and most alarming apprehensions, at those grievances and distresses, with which his majesty's American subjects are oppressed; and having taken under our most serious deliberation, the state of the whole continent, find, that the present unhappy

situation of our affairs is occasioned by a ruinous system of colony administration, adopted by the British ministry about the year 1763, evidently calculated for inslaving these colonies, and, with them, the British Empire. In prosecution of which system, various acts of parliament have been passed, for raising a revenue in America, for depriving the American subjects, in many instances, of the constitutional trial by jury, exposing their lives to danger, by directing a new and illegal trial beyond the seas, for crimes alleged to have been committed in America: And in prosecution of the same system, several late, cruel, and oppressive acts have been passed, respecting the town of Boston and the Massachusetts-Bay, and also an act for extending the province of Quebec, so as to border on the western frontiers of these colonies, establishing an arbitrary government therein, and discouraging the settlement of British subjects in that wide extended country; thus, by the influence of civil principles and ancient prejudices, to dispose the inhabitants to act with hostility against the free Protestant colonies, whenever a wicked ministry shall chuse so to direct them.

To obtain redress of these grievances, which threaten destruction to the lives, liberty, and property of his majesty's subjects, in North-America, we are of opinion, that a non-importation, non-consumption, and non-exportation agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure: And, therefore, we do, for ourselves, and the inhabitants of the several colonies, whom we represent, firmly agree and associate, under the sacred ties of virtue, honour and love of our country, as follows:

First, That from and after the first day of December next, we will not import, into British America, from Great-Britain or Ireland, any goods, wares, or merchandize whatsoever, or from any other place, any such goods, wares, or merchandize, as shall have been exported from Great-Britain or Ireland; nor will we, after that day, import any East-India tea from any part of the world; nor any molasses, syrups, paneles, coffee, or pimento, from the British plantations or from Dominica; nor wines from Madeira, or the Western Islands; nor foreign indigo.

Second, We will neither import nor purchase, any slave imported after the first day of December next; after which time, we will wholly discontinue the slave trade, and will neither be

concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.

Third, As a non-consumption agreement, strictly adhered to, will be an effectual security for the observation of the non-importation, we, as above, solemnly agree and associate, that from this day, we will not purchase or use any tea, imported on account of the East-India company, or any on which a duty hath been or shall be paid; and from and after the first day of March next, we will not purchase or use any East-India tea whatever; nor will we, nor shall any person for or under us, "purchase or use any of those goods, wares, or merchandize, we have agreed not to import, which we shall know, or have cause to suspect, were imported after the first day of December, except such as come under the rules and directions of the tenth article hereafter mentioned.

Fourth, The earnest desire we have not to injure our fellow-subjects in Great-Britain, Ireland, or the West-Indies, induces us to suspend a non-exportation, until the tenth day of September, 1775; at which time, if the said acts and parts of acts of the British parliament herein after mentioned, are not repealed, we will not directly or indirectly, export any merchandize or commodity whatsoever to Great-Britain, Ireland, or the West-Indies, except rice to Europe.

Fifth, Such as are merchants, and use the British and Irish trade, will give orders, as soon as possible, to their factors, agents and correspondents, in Great-Britain and Ireland, not to ship any goods to them, on any pretence whatsoever, as they cannot be received in America; and if any merchant, residing in Great-Britain or Ireland, shall directly or indirectly ship any goods, wares or merchandize, for America, in order to break the said non-importation agreement, or in any manner contravene the same, on such unworthy conduct being well attested, it ought to be made public; and, on the same being so done, we will not, from thenceforth, have any commercial connexion with such merchant.

Sixth, That such as are owners of vessels will give positive orders to their captains, or masters, not to receive on board their vessels any goods prohibited by the said non-importation agreement, on pain of immediate dismission from their service.

Seventh, We will use our utmost endeavours to improve the breed of sheep, and increase their number to the greatest extent; and to that end, we will kill them as seldom as may be, especially those of the most profitable kind; nor will we export any to the West-Indies or elsewhere; and those of us, who are or may become overstocked with, or can conveniently spare any sheep, will dispose of them to our neighbours, especially to the poorer sort, on moderate terms.

Eighth, We will, in our several stations, encourage frugality, œconomy, and industry, and promote agriculture, arts and the manufactures of this country, especially that of wool; and will discountenance and discourage every species of extravagance and dissipation, especially all horse-racing, and all kinds of gaming, cock fighting, exhibitions of shews, plays, and other expensive diversions and entertainments; and on the death of any relation or friend, none of us, or any of our families will go into any further mourning-dress, than a black crape or ribbon on the arm or hat, for gentlemen, and a black ribbon and necklace for ladies, and we will discontinue the giving of gloves and scarves at funerals.

Ninth, Such as are venders of goods or merchandize will not take advantage of the scarcity of goods, that may be occasioned by this association, but will sell the same at the rates we have been respectively accustomed to do, for twelve months last past. — And if any vender of goods or merchandize shall sell such goods on higher terms, or shall, in any manner, or by any device whatsoever, violate or depart from this agreement, no person ought, nor will any of us deal with any such person, or his or her factor or agent, at any time thereafter, for any commodity whatever.

Tenth, In case any merchant, trader, or other person, shall import any goods or merchandize, after the first day of December, and before the first day of February next, the same ought forthwith, at the election of the owner, to be either re-shipped or delivered up to the committee of the county or town, wherein they shall be imported, to be stored at the risque of the importer, until the non-importation agreement shall cease, or be sold under the direction of the committee aforesaid; and in the last-mentioned case, the owner or owners of such goods shall be reimbursed out of the sales, the first cost and charges, the profit, if

any, to be applied towards relieving and employing such poor inhabitants of the town of Boston, as are immediate sufferers by the Boston port-bill; and a particular account of all goods so returned, stored, or sold, to be inserted in the public papers; and if any goods or merchandizes shall be imported after the said first day of February, the same ought forthwith to be sent back again, without breaking any of the packages thereof.

Eleventh, That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do forthwith cause the truth of the case to be published in the gazette; to the end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American liberty; and thenceforth we respectively will break off all dealings with him or her.

Twelfth, That the committee of correspondence, in the respective colonies, do frequently inspect the entries of their custom-houses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this association.

Thirteenth, That all manufactures of this country be sold at reasonable prices, so that no undue advantage be taken of a future scarcity of goods.

Fourteenth, And we do further agree and resolve, that we will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province, in North-America, which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of their country.

And we do solemnly bind ourselves and our constituents, under the ties aforesaid, to adhere to this association, until such parts of the several acts of parliament, passed since the close of the last war, as impose or continue duties on tea, wine, molasses, syrups, paneles, coffee, sugar, pimento, indigo, foreign paper, glass, and painters colours, imported into America, and extend the powers of the admiralty courts beyond their ancient limits,

deprive the American subject of trial by jury, authorise the judge's certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, from a trial by his peers, require oppressive security from a claimant of ships or goods seized, before he shall be allowed to defend his property, are repealed. — And until that part of the act of the 12. G. 3. ch. 24. entitled, "An act for the better securing his majesty's dock-yards, magazines, ships, ammunition, and stores," by which any persons charged with committing any of the offences therein described, in America, may be tried in any shire or county within the realm, is repealed — and until the four acts, passed the last session of parliament, viz. that for stopping the port and blocking up the harbour of Boston — that for altering the charter and government of the Massachusetts-Bay — and that which is entitled, "An act for the better administration of justice, &c." — and that "For extending the limits of Quebec, &c." are repealed. And we recommend it to the provincial conventions, and to the committees in the respective colonies, to establish such farther regulations as they may think proper, for carrying into execution this association.

No. 74. Lord North's Conciliatory Resolution

February 27, 1775

LORD NORTH'S unexpected offer of conciliation, in the form of the resolution following, was presented to the House of Commons, in Committee of the Whole, February 20, 1775. Although the proposal was generally unsatisfactory to the friends of the ministry, it was adopted by a vote of 274 to 88. On the 27th the resolution was reported to the House, and agreed to.

REFERENCES. — *Text* in Force's *American Archives*, Fourth Series, I., 1598. The debates on the resolution are also in *ib.*, 1597–1622. Public opinion in England is best exhibited in the *Annual Register* (1775). Dartmouth's letter to the governors, March 3, urging acceptance of the proposition, is in Force, *op. cit.*, Fourth Series, II., 27, 28.

That it is the opinion of this Committee, that when the Governour, Council, and Assembly, or General Court, of any of his Majesty's Provinces or Colonies in *America*, shall propose to make provision, according to the condition, circumstances, and

situation of such Province or Colony, for contributing their proportion to the common defence, (such proportion to be raised under the authority of the General Court, or General Assembly, of such Province or Colony, and disposable by Parliament,) and shall engage to make provision also for the support of the Civil Government, and the Administration of Justice, in such Province or Colony, it will be proper, if such proposal shall be approved by his Majesty and the two Houses of Parliament, and for so long as such provision shall be made accordingly, to forbear, in respect of such Province or Colony, to levy any Duty, Tax, or Assessment, or to impose any farther Duty, Tax, or Assessment, except only such Duties as it may be expedient to continue to levy or to impose for the regulation of commerce; the nett produce of the Duties last mentioned to be carried to the account of such Province or Colony respectively.

No. 75. New England Restraining Act

March 30, 1775

THE petition to the King, adopted by the first Continental Congress Oct. 26, 1774, was laid before Parliament Jan. 19, 1775, accompanied by voluminous papers relating to affairs in America. February 1 a provisional bill, presented to the House of Lords by the Earl of Chatham, and designed to settle the difficulties in the colonies while "asserting the supreme legislative authority and superintending power of Great Britain," was rejected. An address to the King, assuring him of support at all hazards in measures to put down rebellion, was agreed to, notwithstanding the protest of eighteen members of the Lords, who pronounced the address a virtual declaration of war. February 10, in the Commons, Lord North, asserting that "as the Americans had refused to trade with Great Britain, it was but just that they be not suffered to trade with any other nation," moved for leave to bring in a bill to restrain the trade and commerce of the New England colonies to Great Britain, Ireland, and the West Indies. By a vote of 261 to 85, the motion was carried. The bill was presented on the 17th, had its second reading on the 24th, and March 8 passed without a division. The bill had its second reading in the Lords March 16, and passed that house on the 21st, by a vote of 73 to 21, with an amendment, agreed to by a vote of 52 to 21, including New Jersey, Pennsylvania, Maryland, Virginia, and South Carolina within the scope of the act. Sixteen Lords entered a protest against the bill. The Commons, who already had before them a bill restraining the trade of the southern colonies, rejected the amendment, and the bill passed without it. March 30 the act received

the royal assent. The bill to restrain the trade of the other colonies became law in April. Both acts were repealed by the act of December 22, 1775 [No. 80], prohibiting all trade and intercourse with America.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXXI., 4–11. The act is cited as 15 Geo. III., c. 10. For the proceedings in Parliament, see the *Parliamentary History*, XVIII., or Force's *American Archives*, Fourth Series, I., 1621–1716; *cf.* also the *Annual Register* (1775).

An act to restrain the trade and commerce of the provinces of Massachuset's Bay *and* New Hampshire, *and colonies of* Connecticut *and* Rhode Island, *and* Providence Plantation, *in* North America, *to* Great Britain, Ireland, *and the* British islands *in the* West Indies; *and to prohibit such provinces and colonies from carrying on any fishery on the banks of* Newfoundland, *or other places therein mentioned, under certain conditions and limitations.*

[The section begins with a statement of the purport of certain of the acts of trade, and continues:] *and whereas, during the continuance of the combinations and disorders, which at this time prevail within the provinces of* Massachuset's Bay *and* New Hampshire, *and the colonies of* Connecticut *and* Rhode Island, *to the obstruction of the commerce of these kingdoms, and other his Majesty's dominions, and in breach and violation of the laws of this realm, it is highly unfit that the inhabitants of the said provinces and colonies should enjoy the same privileges of trade, and the same benefits and advantages to which his Majesty's faithful and obedient subjects are intitled;* be it therefore enacted . . . , That from and after the first day of *July*, one thousand seven hundred and seventy-five, and during the continuance of this act, no goods, wares, or merchandises, which are particularly enumerated in, and by the said act made in the twelfth year of king *Charles* the Second, or any other act, being the growth, product, or manufacture of the provinces of *Massachuset's Bay*, or *New Hampshire*, or colonies of *Connecticut, Rhode Island*, or *Providence Plantation*, in *North America*, or any or either of them, are to be brought to some other *British* colony, or to *Great Britain;* or any such enumerated goods, wares, or merchandise, which shall at any time or times have been imported or brought into the said provinces or colonies, or any or either of them, shall be shipped, carried, conveyed, or transported, from any of the said provinces

or colonies respectively, to any land, island, territory, dominion, port, or place whatsoever, other than to *Great Britain*, or some of the *British* islands in the *West Indies*, to be laid on shore there; and that no other goods, wares, or merchandises whatsoever, of the growth, product, or manufacture of the provinces or colonies herein-before mentioned, or which shall at any time or times have been imported or brought into the same, shall, from and after the said first day of *July*, and during the continuance of this act, be shipped, carried, conveyed, or transported, from any of the said provinces or colonies respectively, to any other land, island, territory, dominion, port, or place whatsoever, except to the kingdoms of *Great Britain* or *Ireland*, or to some of the *British* islands in the *West Indies*, to be laid on shore there; any law, custom, or usage, to the contrary notwithstanding.

[Sections II. and III. relate to the giving of bonds and certificates.]

IV. And it is hereby further enacted . . . , That from and after the first day of *September*, one thousand seven hundred and seventy-five, and during the continuance of this act, no sort of wines, salt, or any goods or commodities whatsoever, (except horses, victual, and linen cloth, the produce and manufacture of *Ireland*, imported directly from thence), shall be imported into any of the said colonies or provinces herein-before respectively mentioned, upon any pretence whatsoever, unless such goods shall be *bona fide* and without fraud laden and shipped in *Great Britain*, and carried directly from thence, upon forfeiture thereof, and of the ship or vessel on board which such goods shall be laden; and it shall be lawful for any admiral, chief commander, or commissioned officer, of his Majesty's fleet, or ships of war, or any officer of his Majesty's customs, to seize any ship or vessel arriving at any of the said provinces or colonies before-mentioned, or which shall be discovered within two leagues of any shore thereof, having such goods on board, and the goods laden thereon, (except as before excepted), for which the master, or other person taking charge of such ship or vessel, shall not produce a cocket or clearance from the collector, or proper officer of his Majesty's customs, certifying that the said goods were laden on board the said ship or vessel, in some port of *Great Britain*. . . .

V. Provided always, and it is hereby further enacted . . . , That this act, or any thing herein contained, shall not extend, or

be construed to extend, to prohibit the exportation or carrying out from any of the provinces or colonies before mentioned, or the importation into the same, of any goods or commodities whatsoever for the victualling or providing any of his Majesty's ships of war, or other ships or vessels in his Majesty's service, or for his Majesty's forces, forts, or garrisons, any thing herein contained to the contrary notwithstanding.

VI. And provided also, That nothing herein contained shall extend, or be construed to extend, to hinder or restrain the lawful importation into any or either of the said provinces or colonies herein-before mentioned, from any of the *British* islands in the *West Indies*, of any such goods or commodities, being the growth or produce thereof, as may now by law be imported from thence into the said provinces or colonies, or any or either of them.

VII. And it is hereby further enacted . . . , That if any ship or vessel, being the property of the subjects of *Great Britain*, not belonging to and fitted out from *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, or *Man*, shall be found, after the twentieth day of *July*, one thousand seven hundred and seventy-five, carrying on any fishery, of what nature or kind soever, upon the banks of *Newfoundland*, the coast of *Labrador*, or within the river or gulf of *Saint Lawrence*, or upon the coast of *Cape Breton*, or *Nova Scotia*, or any other part of the coast of *North America*, or having on board materials for carrying on any such fishery, every such ship or vessel, with her guns, ammunition, tackle, apparel, and furniture, together with the fish, if any shall be found on board, shall be forfeited, unless the master, or other person, having the charge of such ship or vessel, do produce to the commander of any of his Majesty's ships of war, stationed for the protection and superintendence of the *British* fisheries in *America*, a certificate, under the hand and seal of the governor or commander in chief, of any of the colonies or plantations of *Quebec*, *Newfoundland*, *Saint John*, *Nova Scotia*, *New York*, *New Jersey*, *Pensylvania*, *Maryland*, *Virginia*, *North Carolina*, *South Carolina*, *Georgia*, *East Florida*, *West Florida*, *Bahamas*, and *Bermudas*, setting forth, that such ship or vessel, expressing her name, and the name of her master, and describing her built and burthen, hath fitted and cleared out, from some one of the said colonies or plantations, in order to

proceed upon the said fishery, and that she actually and *bona fide* belongs to and is the whole and entire property of his Majesty's subjects, inhabitants of the said colony or plantation; which certificates such governors, or commanders in chief respectively, are hereby authorised and required to grant.

VIII. *And to the end that the foregoing prohibitions, restrictions, and regulations, may be more effectually carried into execution*, it is hereby further enacted . . . , That it shall and may be lawful to and for all or any of the commanders of his Majesty's ships or vessels of war, stationed and appointed for the regulation and protection of the *British* fishery upon the coasts of *North America*, or to and for the commanders of any other of his Majesty's ships or vessels employed at sea, and they and every of them are hereby required and enjoined to examine, search, and visit all ships and vessels suspected to be carrying on the said fisheries; and to seize, arrest, and prosecute, in manner herein-after directed, all and every such ships and vessels as shall be found to be carrying on the said fisheries, not belonging to and fitted out from *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, which shall not have on board the certificate herein-before required.

[Sections IX., X., and XI. provide that this act shall not extend to ships clearing from the colonies before June 1, for the whale fishery only; nor to ships belonging to the island of Nantucket, cleared for the whale fishery, and having a proper certificate; nor to fishing vessels fitted out by the towns of Marshfield and Scituate. By Sec. XII., the St. Croix river is declared to be, for the purposes of this act, the boundary between Massachusetts and Nova Scotia.]

XIII. *And whereas it is the intent and meaning of this act, that the several prohibitions and restraints herein imposed upon the trade and commerce, and fisheries, of the said provinces and colonies should be discontinued and cease, so soon as the trade and commerce of his Majesty's subjects may be carried on without interruption;* be it therefore enacted . . . , That whenever it shall be made appear to the satisfaction of his Majesty's governor or commander in chief, and the majority of the council, in the provinces of *New Hampshire* and *Massachusett's Bay* respectively, that peace and obedience to the laws shall be so far restored within the said provinces, or either of them, that the trade and

commerce of his Majesty's subjects may be carried on without interruption within the same; and that goods, wares, and merchandise, have been freely imported into the said provinces, or either of them, from *Great Britain*, and exposed to sale, without any let, hindrance, or molestation, from or by reason of any unlawful combinations to prevent or obstruct the same; and that goods, wares, and merchandise, have in like manner been exported from the said provinces, or either of them respectively, to *Great Britain*, for and during the term of one calendar month preceeding; that then, and in such case, it shall and may be lawful for the governor or commander in chief, with the advice of the council of such provinces respectively, by proclamation, under the seal of such respective province, to notify the same to the several officers of the customs, and all others; and after such proclamation, this act with respect to such province, within which such proclamation or proclamations have been issued as aforesaid, shall be discontinued and cease, (except as herein-after provided); and all officers of his Majesty's customs, and all other persons having charge of the execution of this act, having received due notice of such proclamation, are hereby directed and required to yield and pay obedience to such proclamation, and to proceed in the discharge of their respective duties, in admitting to entry, clearing, and discharging, all ships and vessels, and all goods, wares, and merchandises, into and out of such respective province; and to permit and suffer any ships or vessels to carry on the fisheries within the limits herein-before mentioned, in like manner as if this act had never been made; any thing herein contained to the contrary notwithstanding.

[By Sections XIV. and XV., like proclamation may be made for Connecticut and Rhode Island, on proof that lawful trade has been resumed; but proceedings upon previous seizures are not to be thereby discharged.]

XVI. And it is hereby further enacted . . . , That if any person or persons shall give or grant any false certificate, cocket, or clearance, for any of the purposes required or directed by this act, such person or persons shall forfeit the sum of five hundred pounds, and be rendered incapable of serving his Majesty, his heirs and successors, in any office whatsoever; and if any person or persons shall counterfeit, erase, alter, or falsify, any certificate, cocket, or clearance, required or directed by this act, or shall

knowingly or willingly make use of any false certificate, cocket, or clearance, or of any certificate, cocket, or clearance, so counterfeited, erased, altered, or falsified, such person or persons shall, for every such offence, forfeit the sum of five hundred pounds, and such certificate, cocket, or clearance, shall be invalid and of no effect.

No. 76. Declaration of the Causes and Necessity of Taking up Arms

July 6, 1775

JUNE 23, 1775, John Rutledge of South Carolina, William Livingston of New Jersey, Franklin, Jay, and Thomas Johnson of Maryland, were appointed a committee "to draw up a declaration, to be published by General Washington, upon his arrival at the camp before Boston." The report was brought in the next day, and on the 26th, after debate, was recommitted, and Dickinson and Jefferson added to the committee. A draft prepared by Jefferson being thought by Dickinson too outspoken, the latter prepared a new one, retaining, however, the closing paragraphs as drawn by Jefferson. In this form the declaration was reported June 27, and agreed to July 6.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 134–139. The case for the colonies in 1775 is best stated in John Adams's *Novanglus* (Works, IV., 11–177), in reply to a series of newspaper articles by Daniel Leonard, over the signature of *Massachusettensis*. The two series were printed together at Boston in 1819. See also Chamberlain's *John Adams, the Statesman of the Revolution*.

A declaration by the Representatives of the United Colonies of North-America, now met in Congress at Philadelphia, setting forth the causes and necessity of their taking up arms.

IF it was possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great-Britain some evidence, that this dreadful authority over them, has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common

sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great-Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom, and desperate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms. — Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the island of Great-Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous and warlike nations of barbarians. — Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies. — Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels. — From that fatal moment, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations. — The

new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and of then subduing her faithful friends.

These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder. — The uninterrupted tenor of their peaceable and respectful behaviour from the beginning of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations. — Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the "murderers" of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is chosen by us; or is subject to our controul or

influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion, as they increase ours. We saw the misery to which such despotism would reduce us. We for ten years incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament, in the most mild and decent language.

Administration sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was roused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the king, and also addressed our fellow-subjects of Great-Britain. We have pursued every temperate, every respectful measure: we have even proceeded to break off our commercial intercourse with our fellow-subjects, as the last peaceable admonition, that our attachment to no nation upon earth should supplant our attachment to liberty. — This, we flattered ourselves, was the ultimate step of the controversy: but subsequent events have shewn, how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, tho' we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected. The lords and commons in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts-Bay; and that those concerned in it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to inforce due obedience to the laws and authority of the supreme legislature." — Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another

several of them were intirely prohibited from the fisheries in the seas near their co[a]sts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and stren[u]ously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on. — Equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favour. Parliament adopted an insidious manœuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? in our circumstances to accept them, would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of Boston, in the province of Massachusetts-Bay, and still occupied it is [*as*] a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation. — The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismission, entered into a treaty with him, it was

stipulated that the said inhabitants having deposited their arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial." — His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence, that general Carelton [*Carleton*], the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword, and famine. We* are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force. — The latter is our choice. — We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. — Honour, justice,

* From this point the declaration follows Jefferson's draft.

and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. — We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation, and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before God and the world, *declare*, that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverence, employ for the preservation of our liberties; being with one mind resolved to die freemen rather then to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. — Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. — We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birth-right, and which we ever enjoyed till the late violation of it — for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors,

and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.

No. 77. Petition to the King

July 8, 1775

THE party in Congress which still hoped for reconciliation succeeded, June 3, 1775, in passing a resolution for the appointment of a committee to prepare a petition to the King; and Dickinson, Johnson, John Rutledge, Jay, and Franklin were chosen by ballot as the members of the committee. The petition, drafted by Dickinson, was reported June 19, taken up for consideration July 4, and the following day agreed to. On the 8th the engrossed copy was signed by the members present. The petition, together with other addresses adopted by the Congress, was entrusted to Richard Penn, to be carried to England and laid before the King.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 139–142.

To the king's most excellent majesty:

MOST GRACIOUS SOVEREIGN,

We, your majesty's faithful subjects of the colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, the counties of Newcastle, Kent, and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, in behalf of ourselves, and the inhabitants of these colonies, who have deputed us to represent them in general Congress, entreat your majesty's gracious attention to this our humble petition.

The union between our mother country and these colonies, and the energy of mild and just government, produced benefits so remarkably important, and afforded such an assurance of their permanency and encrease, that the wonder and envy of other nations were excited, while they beheld Great-Britain rising to a power the most extraordinary the world had ever known.

Her rivals, observing that there was no probability of this happy connexion being broken by civil dissensions, and apprehending its future effects, if left any longer undisturbed, resolved to prevent her receiving such continual and formidable accessions of wealth and strength, by checking the growth of those settlements from which they were to be derived.

In the prosecution of this attempt, events so unfavourable to the design took place, that every friend to the interest of Great-Britain and these colonies, entertained pleasing and reasonable expectations of seeing an additional force and exertion immediately given to the operations of the union hitherto experienced, by an enlargement of the dominions of the crown, and the removal of ancient and warlike enemies to a greater distance.

At the conclusion, therefore, of the late war, the most glorious and advantageous that ever had been carried on by British arms, your loyal colonists having contributed to its success, by such repeated and strenuous exertions, as frequently procured them the distinguished approbation of your majesty, of the late king, and of parliament, doubted not but that they should be permitted, with the rest of the empire, to share in the blessings of peace, and the emoluments of victory and conquest.

While these recent and honorable acknowledgments of their merits remained on record in the journals and acts of that august legislature, the parliament, undefaced by the imputation or even the suspicion of any offence, they were alarmed by a new system of statutes and regulations adopted for the administration of the colonies, that filled their minds with the most painful fears and jealousies; and, to their inexpressible astonishment, perceived the danger of a foreign quarrel quickly succeeded by domestic danger, in their judgment, of a more dreadful kind.

Nor were these anxieties alleviated by any tendency in this system to promote the welfare of their mother country. For though its effects were more immediately felt by them, yet its influence appeared to be injurious to the commerce and prosperity of Great-Britain.

We shall decline the ungrateful task of describing the irksome variety of artifices, practised by many of your majesty's ministers, the delusive pretences, fruitless terrors, and unavailing severities, that have, from time to time, been dealt out by them, in their attempts to execute this impolitic plan, or of tracing, through a

series of years past, the progress of the unhappy differences between Great-Britain and these colonies, that have flowed from this fatal source.

Your majesty's ministers, persevering in their measures, and proceeding to open hostilities for enforcing them, have compelled us to arm in our own defence, and have engaged us in a controversy so peculiarly abhorrent to the affections of your still faithful colonists, that when we consider whom we must oppose in this contest, and if it continues, what may be the consequences, our own particular misfortunes are accounted by us only as parts of our distress.

Knowing to what violent resentments, and incurable animosities, civil discords are apt to exasperate and inflame the contending parties, we think ourselves required by indispensable obligations to Almighty God, to your majesty, to our fellow-subjects, and to ourselves, immediately to use all the means in our power, not incompatible with our safety, for stopping the further effusion of blood, and for averting the impending calamities that threaten the British empire.

Thus called upon to address your majesty on affairs of such moment to America, and probably to all your dominions, we are earnestly desirous of performing this office, with the utmost deference for your majesty; and we therefore pray, that your majesty's royal magnanimity and benevolence may make the most favourable constructions of our expressions on so uncommon an occasion. Could we represent in their full force, the sentiments that agitate the minds of us your dutiful subjects, we are persuaded your majesty would ascribe any seeming deviation from reverence in our language, and even in our conduct, not to any reprehensible intention, but to the impossibility of reconciling the usual appearances of respect, with a just attention to our own preservation against those artful and cruel enemies, who abuse your royal confidence and authority, for the purpose of effecting our destruction.

Attached to your majesty's person, family, and government with all devotion that principle and affection can inspire, connected with Great-Britain by the strongest ties that can unite societies, and deploring every event that tends in any degree to weaken them, we solemnly assure your majesty, that we not only most ardently desire the former harmony between her and these

colonies may be restored, but that a concord may be established between them upon so firm a basis as to perpetuate its blessings, uninterrupted by any future dissensions, to succeeding generations in both countries, and to transmit your majesty's name to posterity, adorned with that signal and lasting glory, that has attended the memory of those illustrious personages, whose virtues and abilities have extricated states from dangerous convulsions, and, by securing happiness to others, have erected the most noble and durable monuments to their own fame.

We beg leave farther to assure your majesty, that notwithstanding the sufferings of your loyal colonists, during the course of this present controversy, our breasts retain too tender a regard for the kingdom from which we derive our origin, to request such a reconciliation as might in any manner be inconsistent with her dignity or her welfare. These, related as we are to her, honour and duty, as well as inclination, induce us to support and advance; and the apprehensions that now oppress our hearts with unspeakable grief, being once removed, your majesty will find your faithful subjects on this continent ready and willing at all times, as they have ever been, with their lives and fortunes, to assert and maintain the rights and interests of your majesty, and of our mother country.

We, therefore, beseech your majesty, that your royal authority and influence may be graciously interposed to procure us relief from our afflicting fears and jealousies, occasioned by the system before mentioned, and to settle peace through every part of your dominions, with all humility submitting to your majesty's wise consideration whether it may not be expedient for facilitating those important purposes, that your majesty be pleased to direct some mode, by which the united applications of your faithful colonists to the throne, in pursuance of their common councils, may be improved into a happy and permanent reconciliation; and that, in the mean time, measures may be taken for preventing the further destruction of the lives of your majesty's subjects; and that such statutes as more immediately distress any of your majesty's colonies may be repealed.

For by such arrangements as your majesty's wisdom can form, for collecting the united sense of your American people, we are convinced your majesty would receive such satisfactory proofs of the disposition of the colonists towards their sovereign and parent

state, that the wished for opportunity would soon be restored to them, of evincing the sincerity of their professions, by every testimony of devotion becoming the most dutiful subjects and the most affectionate colonists.

That your majesty may enjoy a long and prosperous reign, and that your descendants may govern your dominions with honour to themselves and happiness to their subjects, is our sincere prayer.

No. 78. Report on Lord North's Conciliatory Resolution

July 31, 1775

LORD NORTH'S offer of conciliation came before the Continental Congress May 26, 1775, in the form of a communication from the assembly of New Jersey; it was also transmitted later by the assemblies of Pennsylvania and Virginia. A memorandum from Lord North, written by Grey Cooper, undersecretary of the treasury, urging acceptance of the proffered terms, was submitted May 30. July 22, the declaration of causes and other papers having been disposed of, Franklin, Jefferson, John Adams, and Richard Henry Lee were appointed a committee to consider and report on the resolution. The report, drawn by Jefferson on the lines of a report of the Virginia House of Burgesses, June 10, on the same resolution, was brought in July 25, and, on the 31st, agreed to.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 175–178. The Virginia report is in Force's *American Archives*, Fourth Series, II., 1200–1202.

[The report recites the resolution of Lord North, and continues:]

The Congress took the said resolution into consideration, and are, thereupon, of opinion,

That the colonies of America are entitled to the sole and exclusive privilege of giving and granting their own money: that this involves a right of deliberating whether they will make any gift for what purposes it shall be made, and what shall be its amount; and that it is a high breach of this privilege for any body of men, extraneous to their constitutions, to prescribe the purposes for which money shall be levied on them, to take to themselves the authority of judging of their conditions, circumstances and situa-

tions, and of determining the amount of the contribution to be levied.

That as the colonies possess a right of appropriating their gifts, so are they entitled at all times to enquire into their application, to see that they be not wasted among the venal and corrupt for the purpose of undermining the civil rights of the givers, nor yet be diverted to the support of standing armies, inconsistent with their freedom and subversive of their quiet. To propose, therefore, as this resolution does, that the monies given by the colonies shall be subject to the disposal of parliament alone, is to propose that they shall relinquish this right of enquiry, and put it in the power of others to render their gifts ruinous, in proportion as they are liberal.

That this privilege of giving or of withholding our monies, is an important barrier against the undue exertion of prerogative, which, if left altogether without controul, may be exercised to our great oppression; and all history shows how efficacious is its intercessions for redress of grievances and re-establishment of rights, and how improvident it would be to part with so powerful a mediator.

We are of opinion that the proposition contained in this resolution is unreasonable and insidious: Unreasonable, because, if we declare we accede to it, we declare, without reservation, we will purchace the favour of parliament, not knowing at the same time at what price they will please to estimate their favour; it is insidious, because, individual colonies, having bid and bidden again, till they find the avidity of the seller too great for all their powers to satisfy; are then to return into opposition, divided from their sister colonies whom the minister will have previously detached by a grant of easier terms, or by an artful procrastination of a definitive answer.

That the suspension of the exercise of their pretended power of taxation being expressly made commensurate with the continuance of our gifts, these must be perpetual to make that so. Whereas no experience has shewn that a gift of perpetual revenue secures a perpetual return of duty or of kind disposition. On the contrary, the parliament itself, wisely attentive to this observation, are in the established practice of granting their supplies from year to year only.

Desirous and determined, as we are, to consider, in the most

dispassionate view, every seeming advance towards a reconciliation made by the British parliament, let our brethren of Britain reflect, what would have been the sacrifice to men of free spirits, had even fair terms been proffered, as these insidious proposals were with circumstances of insult and defiance. A proposition to give our money, accompanied with large fleets and armies, seems addressed to our fears rather than to our freedom. With what patience would Britons have received articles of treaty from any power on earth when borne on the point of the bayonet by military plenipotentiaries?

We think the attempt unnecessary to raise upon us by force or by threats our proportional contributions to the common defence, when all know, and themselves acknowledge, we have fully contributed, whenever called upon to do so in the character of freemen.

We are of opinion it is not just that the colonies should be required to oblige themselves to other contributions, while Great-Britain possesses a monopoly of their trade. This of itself lays them under heavy contribution. To demand, therefore, additional aids in the form of a tax, is to demand the double of their equal proportion: if we are to contribute equally with the other parts of the empire, let us equally with them enjoy free commerce with the whole world. But while the restrictions on our trade shut to us the resources of wealth, is it just we should bear all other burthens equally with those to whom every resource is open?

We conceive that the British parliament has no right to intermeddle with our provisions for the support of civil government, or administration of justice. The provisions we have made, are such as please ourselves, and are agreeable to our own circumstances: They answer the substantial purposes of government and of justice, and other purposes than these should not be answered. We do not mean that our people shall be burthened with oppressive taxes, to provide sinecures for the idle or the wicked, under colour of providing for a civil list. While parliament pursue their plan of civil government within their own jurisdiction, we also hope to pursue ours without molestation.

We are of opinion the proposition is altogether unsatisfactory, because it imports only a suspension of the mode, not a renunciation of the pretended right to tax us: because, too, it does not propose to repeal the several acts of parliament passed for the

purposes of restraining the trade, and altering the form of government of one of our colonies: extending the boundaries and changing the government of Quebec; enlarging the jurisdiction of the courts of admiralty and vice-admiralty; taking from us the rights of trial by a jury of the vicinage, in cases affecting both life and property; transporting us into other countries to be tried for criminal offences; exempting, by mock-trial, the murderers of colonists from punishment; and quartering soldiers on us in times of profound peace. Nor do they renounce the power of suspending our own legislatures, and for [*of*] legislating for us themselves in all cases whatsoever. On the contrary, to shew they mean to [*no*] discontinuance of injury, they pass acts, at the very time of holding out this proposition, for restraining the commerce and fisheries of the provinces of New-England, and for interdicting the trade of other colonies with all foreign nations, and with each other. This proves, unequivocally, they mean not to relinquish the exercise of indiscriminate legislation over us.

Upon the whole, this proposition seems to have been held up to the world, to deceive it into a belief that there was nothing in dispute between us but the mode of levying taxes; and that the parliament having now been so good as to give up this, the colonies are unreasonable if not perfectly satisfied: Whereas, in truth, our adversaries still claim a right of demanding *ad libitum*, and of taxing us themselves to the full amount of their demand, if we do comply with it. This leaves us without any thing we can call property. But, what is of more importance, and what in this proposal they keep out of sight, as if no such point was now in contest between us, they claim a right to alter our charters and establish laws, and leave us without any security for our lives and liberties. The proposition seems also to have been calculated more particularly to lull into fatal security, our well-affected fellow-subjects on the other side the water, till time should be given for the operation of those arms, which a British minister pronounced would instantaneously reduce the "cowardly" sons of America to unreserved submission. But, when the world reflects, how inadequate to justice are these vaunted terms; when it attends to the rapid and bold succession of injuries, which, during the course of eleven years, have been aimed at these colonies; when it reviews the pacific and respectful expostulations, which, during that whole time, were the sole arms we

opposed to them; when it observes that our complaints were either not heard at all, or were answered with new and accumulated injuries; when it recollects that the minister himself, on an early occasion, declared, "that he would never treat with America, till he had brought her to his feet," and that an avowed partisan of ministry has more lately denounced against us the dreadful sentence, "*delenda est Carthago;*" that this was done in presence of a British senate, and being unreproved by them, must be taken to be their own sentiment, (especially as the purpose has already in part been carried into execution, by their treatment of Boston and burning of Charlestown;) when it considers the great armaments with which they have invaded us, and the circumstances of cruelty with which these have commenced and prosecuted hostilities; when these things, we say, are laid together and attentively considered, can the world be deceived into an opinion that we are unreasonable, or can it hesitate to believe with us, that nothing but our own exertions may defeat the ministerial sentence of death or abject submission.

No. 79. Proclamation of Rebellion

August 23, 1775

THE petition of July 8, 1775, to the King [No. 77], was the last offer of reconciliation made by Congress; and the decision of the question of independence was thought by many to depend upon its reception. Already, in January, before the first petition had been laid before Parliament, the Privy Council had decided that force should be used to suppress the rebellion, and that all persons resisting the King should be proclaimed traitors. The attention of Parliament, however, was immediately taken up with the conciliatory proposals of Chatham, Burke, and Lord North, and the acts restraining the trade of the northern and southern colonies; and the proclamation was not then issued. In the mean time, the British and American forces came into collision at Lexington, Concord, and Bunker Hill, and Congress chose Washington as commander-in-chief of the American army. The news of these proceedings fixed the determination of the King, and he ordered the proclamation to be drawn up. On the 23d of August, the day on which Richard Penn and Arthur Lee were to have presented the "olive branch" petition to Lord Dartmouth, the proclamation was issued. The petition was handed to Lord Dartmouth September 1, but the colonial representatives were refused an audience with the King, and were finally informed that no

answer would be given. The news of the rejection of the petition reached America October 31. November 3, Congress recommended the people of New Hampshire to establish a form of government. December 6, a formal report on the proclamation was agreed to, in which, after repudiating the charge of treason, Congress declared that "whatever punishment shall be inflicted upon any persons in the power of our enemies, for favouring, aiding, or abetting the cause of American liberty, shall be retaliated in the same kind, and the same degree, upon those in our power, who have favoured, aided, or abetted, or shall favour, aid, or abet the system of ministerial oppression."

REFERENCES. — *Text* in Force's *American Archives*, Fourth Series, III., 240, 241. The report of December 6 is in the *Journals of Congress* (ed. 1800), I., 263–265. The best account of events is in Frothingham's *Rise of the Republic*, chap. 10.

GEORGE R.

Whereas many of our subjects in divers parts of our Colonies and Plantations in *North America*, misled by dangerous and ill designing men, and forgetting the allegiance which they owe to the power that has protected and supported them; after various disorderly acts committed in disturbance of the publick peace, to the obstruction of lawful commerce, and to the oppression of our loyal subjects carrying on the same; have at length proceeded to open and avowed rebellion, by arraying themselves in a hostile manner, to withstand the execution of the law, and traitorously preparing, ordering and levying war against us: And whereas, there is reason to apprehend that such rebellion hath been much promoted and encouraged by the traitorous correspondence, counsels and comfort of divers wicked and desperate persons within this realm: To the end therefore, that none of our subjects may neglect or violate their duty through ignorance thereof, or through any doubt of the protection which the law will afford to their loyalty and zeal, we have thought fit, by and with the advice of our Privy Council, to issue our Royal Proclamation, hereby declaring, that not only all our Officers, civil and military, are obliged to exert their utmost endeavours to suppress such rebellion, and to bring the traitors to justice, but that all our subjects of this Realm, and the dominions thereunto belonging, are bound by law to be aiding and assisting in the suppression of such rebellion, and to disclose and make known all traitorous conspiracies and attempts against us, our crown and dignity; and we do accordingly strictly charge and command all our Officers, as well civil as military, and all others our obedient and loyal

subjects, to use their utmost endeavours to withstand and suppress such rebellion, and to disclose and make known all treasons and traitorous conspiracies which they shall know to be against us, our crown and dignity; and for that purpose, that they transmit to one of our principal Secretaries of State, or other proper officer, due and full information of all persons who shall be found carrying on correspondence with, or in any manner or degree aiding or abetting the persons now in open arms and rebellion against our Government, within any of our Colonies and Plantations in *North America*, in order to bring to condign punishment the authors, perpetrators, and abetters of such traitorous designs.

Given at our Court at *St. James's* the twenty-third day of *August*, one thousand seven hundred and seventy-five, in the fifteenth year of our reign.

GOD save the KING.

No. 80. Act Prohibiting Trade and Intercourse with America

December 22, 1775

PARLIAMENT met October 26, 1775. November 7, the "olive branch" petition was laid before the Lords, and on the following day Richard Penn was examined at the bar of that House; but a motion declaring that the petition afforded ground for reconciliation was rejected by a vote of 83 to 33. On the 16th, a second proposal for conciliation, submitted by Burke, was rejected by the Commons, the vote being 105 to 210. On the 20th, Lord North brought in a bill to interdict all trade and intercourse with America. The bill had its second reading December 1, and on the 11th, by a vote of 112 to 16, passed the Commons. There was again strong opposition in the Lords; but the second reading was ordered on the 15th, and on the 20th, the bill, with amendments, passed. The amendments were accepted by the Commons, and December 22 the act received the royal assent. The condition of war made the prohibitory sections of the act of little practical importance; but the provisions authorizing the impressment of American seamen were peculiarly revolting to the colonies. The act was repealed in 1784 (23 Geo. III., c. 26).

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXXI., 135–154. The act is cited as 16 Geo. III., c. 5. The debates in Parliament are in the *Parliamentary History*, XVIII.; with this compare the account in the *Annual Register* (1776).

An act to prohibit all trade and intercourse with the colonies of New Hampshire, Massachuset's Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, *the three lower counties on* Delaware, Maryland, Virginia, North Carolina, South Carolina, *and* Georgia, *during the continuance of the present rebellion within the said colonies respectively; for repealing an act, made in the fourteenth year of the reign of his present Majesty*, to discontinue the landing and discharging, lading or shipping, of goods, wares, and merchandize, at the town and within the harbour of *Boston*, in the province of *Massachuset's Bay; and also two acts, made in the last session of parliament, for restraining the trade and commerce of the colonies in the said acts respectively mentioned; and to enable any person or persons appointed and authorized by his Majesty to grant pardons, to issue proclamations, in the cases and for the purposes therein mentioned.*

WHEREAS *many persons in the colonies of* New Hampshire, Massachuset's Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, *the three lower counties on* Delaware, Maryland, Virginia, North Carolina, South Carolina, *and* Georgia, *have set themselves in open rebellion and defiance to the just and legal authority of the king and parliament of* Great Britain, *to which they ever have been, and of right ought to be, subject; and have assembled together an armed force, engaged his Majesty's troops, and attacked his forts, have usurped the powers of government, and prohibited all trade and commerce with this kingdom, and the other parts of his Majesty's dominions: for the more speedily and effectually suppressing such wicked and daring designs, and for preventing any aid, supply, or assistance being sent thither during the continuance of the said rebellious and treasonable commotions*, be it therefore declared and enacted . . . , That all manner of trade and commerce is and shall be prohibited with the colonies of *New Hampshire, Massachuset's Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania*, the three lower counties on *Delaware, Maryland, Virginia, North Carolina, South Carolina*, and *Georgia;* and that all ships and vessels of or belonging to the inhabitants of the said colonies, together with their cargoes, apparel, and furniture, and all other ships and vessels whatsoever, together with their cargoes, apparel, and furniture, which shall be

found trading in any port or place of the said colonies, or going to trade, or coming from trading, in any such port or place, shall become forfeited to his Majesty, as if the same were the ships and effects of open enemies; and shall be so adjudged, deemed, and taken in all courts of admiralty, and in all other courts whatsoever.

II. Provided always, and it is hereby further enacted and declared . . . , That nothing in this act shall extend, or be construed to extend, to such ships and vessels as shall be actually retained or employed in his Majesty's service, or to such ships and vessels as shall be laden with provisions for the use of his Majesty's fleets, armies, or garrisons, or for the use of the inhabitants of any town or place garrisoned or possessed by any of his Majesty's troops, provided the masters of such ships and vessels respectively shall produce a licence in writing, under the hand and seal of the lord high admiral of *Great Britain* for the time being, or of three or more commissioners for the time being for executing the office of lord high admiral of *Great Britain*, or of the commanders of his Majesty's fleets or armies, or of the governor, lieutenant-governor, or commander in chief of any of his Majesty's colonies or provinces not hereinbefore mentioned, specifying the voyage in which such ship or vessel shall be employed, and expressing the time for which such licence shall subsist and be in force, and also expressing the quantity and species of the said stores and provisions on board: and if any goods, wares, or merchandizes, other than stores and provisions for his Majesty's use, or provisions for the use of the inhabitants of any town or place garrisoned and possessed by his Majesty's troops, shall be found on board such ships or vessels (the necessary stores for the ship's use, and the baggage of the passengers, only excepted) in any or either of those cases, the said goods, wares, and merchandizes shall be forfeited, and shall and may be seized and prosecuted in the manner hereinafter directed.

III. *And, for the encouragement of the officers and seamen of his Majesty's ships of war*, be it further enacted, That the flag officers, captains, commanders, and other commissioned officers in his Majesty's pay, and also the seamen, marines, and soldiers on board, shall have the sole interest and property of and in all and every such ship, vessel, goods, and merchandize, which they shall seize and take (being first adjudged lawful prize in any of

his Majesty's courts of admiralty) to be divided in such proportions, and after such manner, as his Majesty shall think fit to order and direct by proclamation or proclamations hereafter to be issued for those purposes.

IV. And be it further enacted . . . , That it shall and may be lawful to and for the said flag officers, captains, and commanders respectively, to cause to be taken, or put on board any of his Majesty's ships or vessels of war, or on board any other ships or vessels, all and every the masters, crews, and other persons, who shall be found on board such ship and ships as shall be seized and taken as prize as aforesaid; and also to enter the names of such of the said mariners and crews upon the book or books of his Majesty's said ships or vessels, as they, the said flag officers, captains, and commanders, shall respectively think fit; from the time and times of which said entries respectively, the said mariners and crews shall be considered, and they are hereby declared to belong to, and to be as much in the service of his Majesty, to all intents and purposes, as if the said mariners and crews had entered themselves voluntarily to serve on board his Majesty's said ships and vessels respectively; and also, that it shall and may be lawful to and for the said flag officers, captains, and commanders respectively, to detain, or cause to be detained and kept, the masters and other persons, and also such others of the mariners and crews of the said prize-ships as shall not be entered upon the books of his Majesty's ships or vessels of war as aforesaid, in and on board any ship or ships, vessel or vessels whatsoever, until the arrival of such last-mentioned ships or vessels in some port in *Great Britain* or *Ireland*, or in any port of *America* not in rebellion; and upon the arrival of those ships or vessels in any such port, the commanders thereof are hereby respectively authorized and required immediately to set the said last-mentioned mariners and crews, and also the said masters and other persons, at liberty on shore there.

[Sections V.–XXXIV. relate to procedure, etc., in cases of prize. Sections XXXV.–XL. exempt from the operation of the act, under certain conditions, vessels sailing from the West Indies for Great Britain on or before March 1, 1776; vessels sailing from Great Britain to the West Indies, from any of the colonies for Great Britain or the West Indies, or from any European port at which they may lawfully trade, on or before Jan. 1, 1776; and

vessels of Nantucket, engaged in the whale fishery, fitted out before Dec. 1, 1775.]

XLI. *And whereas, before the passing this act, and since the commencement of the said unnatural rebellion, divers persons, vessels, cargoes, and other effects, may have been seized, detained, examined, searched, damaged, or destroyed, for the public service, in withstanding or suppressing the said rebellion,* be it further enacted . . . , That all such acts shall be deemed just and legal to all intents, constructions, and purposes whatsoever: . . .

[Section XLII. repeals, after Jan. 1, 1776, the Boston Port Act, and the two acts restraining the trade of the northern and southern colonies.]

XLIII. And be it further enacted . . . , That this act, so far as the same relates to the capture and forfeiture of ships and vessels belonging to the inhabitants of the above-mentioned colonies, shall, except in the cases herein-before mentioned, commence and be in force from and after the first day of January, one thousand seven hundred and seventy six; and so far as the same relates to the capture and forfeiture of all other ships and vessels that shall be found going to trade in or at any of the said colonies, from and after the first day of February, . . . [1776] . . . ; and so far as the same relates to the capture and forfeiture of all other ships and vessels that shall be found trading in or at any of the said colonies, or bound and trading from any port or place in the same, from and after the twenty fifth day of March, . . . [1776] . . . ; and shall continue to be in force so long as the said colonies respectively shall remain in a state of rebellion.

XLIV. Provided always nevertheless, and it is hereby enacted . . . , That in order to encourage all well affected persons in any of the said colonies to exert themselves in suppressing the rebellion therein, and to afford a speedy protection to those who are disposed to return to their duty, it shall and may be lawful to and for any person or persons, appointed and authorised by his Majesty to grant a pardon or pardons to any number or description of persons, by proclamation, in his Majesty's name, to declare any colony or province, colonies or provinces, or any county, town, port, district, or place, in any colony or province, to be at the peace of his Majesty; and from and after the issuing of any such proclamation in any of the aforesaid colonies or provinces, or if his Majesty shall be graciously pleased to signify

the same by his royal proclamation, then, from and after the issuing of such proclamation, this act, with respect to such colony or province, colonies or provinces, county, town, port, district, or place, shall cease, determine, and be utterly void; and if any captures shall be made, after the date and issuing of such proclamations, of any ships or vessels, and their cargoes, belonging to the inhabitants of any such colony or province, colonies or provinces, county, town, port, district, or place, or of any ships trading to or from such colony or province, colonies or provinces respectively, the same shall be restored to the owners of such ships or vessels, upon claim being entered, and due proof made of their property therein, and the captors shall not be liable to any action for seizing or detaining the said ships or vessels, or their cargoes, without proof being made that they had actual notice of such proclamation having been issued.

XLV. Provided always, That such proclamation or proclamations shall not discharge or suspend any proceeding upon any capture of any such ship or vessel made before the date and issuing thereof.

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